AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-12-91
Vol. 56 No. 177

federal register

Thursday
September 12, 1991

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

9-12-91
Vol. 56 No. 177
Pages 46365-46522

federal register

Thursday
September 12, 1991

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

DENVER, CO

WHEN: September 26, at 9:00 am
WHERE: Denver Federal Center, Building 20
(E8 entrance on 2nd Street)
Conference Room B1409, Denver, CO
RESERVATIONS: Federal Information Center
1–800–359–3997

WASHINGTON, DC

WHEN: September 30, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

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Presidential Documents

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The President

Proclamation 6333 of September 10, 1991

General Pulaski Memorial Day, 1991

By the President of the United States of America

A Proclamation

When our ancestors boldly declared America's Independence, the hopes of countless people around the world went with them. Among those who understood the significance of America's struggle for liberty and self-government was the daring Polish patriot, Casimir Pulaski.

Before he journeyed to the United States and volunteered to join the Continental Army, Casimir Pulaski had fought to free his native Poland from tyranny and foreign domination. His devotion to the cause of liberty cost him dearly—forced into exile, the young Count had to leave behind both his personal fortune and his beloved homeland. Yet Count Pulaski never relinquished his belief in the universal cause of freedom. He reportedly wrote to General George Washington: "I came here, where Freedom is being defended, to serve it, and to live or die for it." With those words, Casimir Pulaski expressed his determination to stand in solidarity with the American colonists.

An experienced and highly skilled tactician, Count Pulaski was named a General in the Continental Army and was eventually given command of his own cavalry unit. From the time he volunteered for service until his last day in command of the Pulaski Legion, this lifelong freedom fighter participated in a number of important campaigns—including Brandywine, Germantown, and Trenton. Leading a bold charge during the siege of Savannah on October 9, 1779, he was mortally wounded. He died two days later and was buried at sea.

Were he alive today, Pulaski would find his dreams fulfilled, the cause of freedom won. The ideals of liberty and representative government that were planted on these shores more than 200 years ago have taken root around the world. Under a new, democratic government, the Polish people have begun working to break the cycle of impoverishment and decline imposed by nearly half a century of totalitarian rule. The United States wholeheartedly supports their courageous and determined efforts to establish a market-oriented economy and stable democratic rule.

On this occasion, as we remember General Pulaski's extraordinary contributions to our country, we also pay tribute to our friends in Poland and to the many Americans of Polish descent who have labored and sacrificed to uphold the cause of freedom. Their faithfulness and resolve, like that of General Pulaski, offers a worthy example to us all.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 1991, as General Pulaski Memorial Day. I direct the appropriate government officials to display the flag of the United States on all government buildings on that day, and I encourage the people of the United States to commemorate this occasion as appropriate throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-22126
Filed 9-10-91; 4:02 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, without change, a proposed rule published in the Federal Register on March 28, 1990 (55 FR 11384). This final rule: (1) To avoid program confusion and dispute, clarifies without changing the substance of, the language in the provisions in 7 CFR part 701 regarding calculation of the maximum cost-share percentages for the Emergency Conservation Program (ECP); and (2) revises the regulations in 7 CFR part 701 the regulations governing the Agricultural Conservation Program (ACP), ECP, and Forestry Incentives Program (FIP), concerning cost-shares. The adopted cost share provisions specify that a program participant will not be considered to have an eligible cost to the extent that such person has received compensation from a third party. These cost share provisions are intended to aid in maximizing the productive and efficient use of program funds.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–447–6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1521–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number—10.063; Title—Emergency Conservation Program (ECP), Number—10.054; Title—Forestry Incentives Program (FIP), Number 10.064; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

On March 28, 1990, a rule was published in the Federal Register (55 FR 11384) that proposed changes in 7 CFR part 701; specifically: (1) a clarification of the maximum cost-share percentages for the ECP in § 701.70, and (2) the handling, for ACP, ECP, and FIP, of cost-shares where there has been compensation received by the program applicant from other sources. Generally, as to the second matter, it was proposed that the applicant would not be considered to have incurred costs to the extent of such third party compensation except to the extent that the local State Agricultural Stabilization and Conservation committee (ASC Committee) determined, as permitted by the Deputy Administrator for State and County Operations, ASCS, that an exception to the general rule is needed to accomplish program goals.

No comments were received with respect to these proposals. Accordingly, it has been determined that the proposed rule should be adopted as a final rule.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs, Natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

Final Rule

Accordingly, the proposed rule published at 55 FR 11384 (March 28, 1990) is hereby adopted as a final rule without change, as follow:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for part 701 is revised to read as follows:

Authority: 16 U.S.C. 590d, 590g-590o, 590p(a), 590q, 1501–1510, 1606, 2101–2111, 2201–2205; 48 U.S.C. 1469d(c).

2. Section 701.51 is revised to read as follows:

§ 701.51 Extent of cost-sharing.

(a) The maximum payment under this subpart per person, per disaster, is limited to $200,000, including the amount of any payment received by such person as the result of a disaster under a pooling agreement.

(b) The cost-share payments which may be made by ASCS for a practice under the program shall, subject to the maximum payment amount specified in paragraph (a) of this section and any other limitation as may apply, be further limited to the level of cost-share assistance established by the county committee not to exceed the following amounts:

(1) 64 percent of the first $62,500 of eligible reimbursable costs; plus

(2) 40 percent of the second $62,500 of eligible reimbursable costs; plus

(3) 20 percent of the remaining eligible reimbursable costs up to such amount as would produce a cost-share not in

excess of the limitation in paragraph (a) of this section.

3. Section 701.70 is revised to read as follows:

§ 701.70 Practices carried out with aid from ineligible persons.

(a) Except as provided in paragraph (b) of this section, financial assistance which is made available, or will be made available, to a program participant from a person ineligible for cost-share assistance under this part for the practice, including aid from a State or Federal agency other than assistance made available under this part, shall be deducted from the program participant's total costs incurred for the practice for purposes of determining the applicant's eligible reimbursable costs under this part.

(b) Third party contributions need not be deducted under paragraph (a) of this section where it is determined by the State ASC Committee, in accordance with instructions of the Deputy Administrator, State and County Operations (DASCO), ASCS, that an exception would be in furtherance of program objectives. However, the total cost-share paid may not, in any case, exceed the net contribution (exclusive of any contribution by ineligible persons) otherwise made by the applicant to the cost of carrying out the practice.

Signed at Washington, DC, on August 20, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-20563 Filed 9-11-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-91-268]

Termination of Provisions Applicable to Fresh Plums Grown in California Under Marketing Order No. 917 and Certain Requirements Established Under Those Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This action terminates, effective September 12, 1991, the plum provisions of the Federal marketing order for fresh pears, plums and peaches grown in California and removes the grade, maturity, quality, size, pack, container marking, administrative and reporting requirements for plums established under those provisions. The Secretary has determined that the plum provisions of the order no longer tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Act). Continuance of the plum program was favored by 60 percent of plum producers voting, who produced 52 percent of the volume of plums represented in a referendum held between January 7 and February 6, 1991. This vote demonstrates the lack of support to carry out the objectives of the Act.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC, 20090-6456, telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of sections 8c(6), (7), and (16)(A) of the Act (7 U.S.C. 601-674) and §§ 917.42(b) and 917.61(b) of Marketing Order No. 917 (M.O. 917) regulating the handling of fresh pears, plums, and peaches grown in California.

M.O. 917 regulates the handling of fresh pears, plums and peaches grown in California and has been in effect since 1939. The order provides for the establishment of pear, plum, and peach grade, maturity, quality and size requirements, as well as specifications for the size, pack and marking of pear, plum, and peach containers. The order also authorizes production and marketing research, market development, and paid generic advertising for pears, plums, and peaches grown in California. Reporting requirements are also authorized under the marketing order program.

Section 917.61(e) of M.O. 917 specifies that continuance referenda shall be conducted among California pear, plum and peach producers every four years within the period December 1 and February 15. Federal Marketing Order 916 for Nectarines Grown in California is a companion marketing order to M.O. 917 which provides for a continuance referendum during the same period. A referenda order was published in the **Federal Register** on November 30, 1990 (55 FR 49631) announcing that, during the period January 7 through February 6, 1991, the U.S. Department of Agriculture (Department) would conduct referenda among California nectarine, pear, plum and peach producers to determine if they favored continuation of their respective programs under the two marketing orders. The referenda order indicated that the Secretary would consider terminating the provisions relating to a particular commodity's program covered under the orders if less than two-thirds of the number of producers of the commodity voting and producers of less than two-thirds of the commodity's volume represented in the commodity's referendum favored continuance.

Ballots were mailed to 2,757 known producers of nectarines, pears, plums and peaches in California. By the close of the voting period, 1029 valid plum votes had been cast, representing approximately 63 percent of the known plum producers in California. The results show that 60 percent of the plum producers voting, who produced 52 percent of the plum volume represented in the plum referendum, favored continuation of the plum program. Thus, the plum order failed to meet the two-thirds count and volume criteria used to measure producer support for continuation of the program.

The relatively large number of plum votes cast and number of plum producers who voted against continuation of the plum program provided a reliable indication that a significant portion of California plum producers did not favor continuation of the plum provisions of M.O. 917. Given the demonstrated lack of producer support for the plum provisions, it is determined that those provisions no longer effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act, and § 917.61(b) of M.O. 917, the provisions relating to and regulating the handling of plums in M.O. 917 are hereby terminated. Section 8c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on April 12, 1991.

Effective May 20, 1991 (56 FR 23773, May 24, 1991), the plum maturity, grade, quality, size, pack, container, container marking, and reporting requirements specified in §§ 917.140, 917.177, 917.454, and 917.460 were suspended. This termination order removes these and other provisions related to plums from M.O. 917 and the rules and regulations thereunder.

The Plum Commodity Committee (committee) met on May 2, 1991, to begin closing down operations. Pursuant to § 917.62 of M.O. 917, the committee began turning over to the Control Committee the authority to continue as trustee of all the funds and property in the possession or under the control of the committee. The Control Committee, made up of peach and pear producers and handlers, shall continue in the capacity of concluding and liquidating the affairs of the committee until discharged by the Secretary.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to 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: (1) This action relieves restrictions on handlers by terminating the requirements regulating the handling of plums pursuant to M.O. 917; (2) handlers were given notice of this action in a widely distributed press release issued on March 21, 1991, and in the final rule, published in the **Federal Register** May 24, 1991, suspending requirements applicable to plums for the 1991 shipping season; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

Accordingly, for reasons set forth in the preamble, the following sections applying to plums in 7 CFR part 917 are amended as follows:

1. The authority citation for 7 CFR part 917 continues to read as follows:

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

2. The title is revised to read as follows: "Part 917—Fresh Pears and Peaches Grown in California."

3. Section 917.4 is revised to read as follows:

§ 917.4 Fruit.

Fruit means the edible product of the following two kinds of trees (a) all varieties of peaches, and (b) all varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau.

§ 917.8 [Removed]

4. Section 917.8 is removed.

5. Section 917.15 is revised to read as follows:

§ 917.15 Representation area.

Representation area means any one of the districts or groups of districts which are designated for nominating members and alternate members to the commodity committees under §§ 917.21 through 917.22 or as changed pursuant to § 917.35(g).

6. Section 917.20 is amended by revising the first sentence to read as follows:

§ 917.20 Designation of members of commodity committees.

There are hereby established a Pear Commodity Committee and a Peach Commodity Committee each consisting of 13 members. * * *

§ 917.23 [Removed]

7. Section 917.23 is removed.

8. Paragraph (a) of section 917.24 is amended by revising the first sentence and paragraph (c) is revised to read as follows:

§ 917.24 Procedures for nominating members of various commodity committees.

(a) The Control Committee shall hold or cause to be held not later than February 15 of each odd numbered year a meeting or meetings of the growers of the fruits in each representation area set forth in §§ 917.21 and 917.22. * * *

* * * * *

(c) A particular grower, including employees of such growers, shall be eligible for membership as principle or alternate to fill only one position on a commodity committee. A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period.

9. Section 917.26 is amended by revising the first sentence to read as follows:

§ 917.26 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §§ 917.21 through 917.24, the Secretary may, without regard to nominations, select the member and alternate members of commodity committees on the basis of representation provided in §§ 917.21 and 917.22. * * *

10. Section 917.28 is amended by revising the second sentence to read as follows:

§ 917.28 Procedures for filing vacancies on committees.

* * * If the names of nominees to fill any such vanancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations on the basis of representation provided for in §§ 917.16, 917.21 and 917.22

11. Paragraph (b) of § 917.29 is revised to read as follows:

§ 917.29 Organization of committees.

* * * * *

(b) A quorum of the Pear Commodity Committee and of the Peach Commodity Committee shall each consist of nine members.

* * * * *

12. Paragraph (k) of § 917.34 is amended by revising the first sentence to read as follows:

§ 917.34 Duties of Control Committee.

* * * * *

(k) To appoint nomination committees if it deems proper for any or each nomination meeting held pursuant to §§ 917.21 and 917.22. * * *

§ 917.35 [Amended]

13. Paragraph (a) of § 917.35 is amended by removing the last proviso which begins, "*Provided further,* That the Plum . . . ." from that paragraph.

§ 917.100 [Amended]

14. Section 917.100 is amended by removing the word "plums."

§§ 917.116 and 917.140 [Removed]

15. Section 917.116 is removed.

16. Section 917.140 is removed.

§ 917.143 [Amended]

17. Paragraph (b) of § 917.143 is amended by removing the word "plums" from the introductory text and subparagraphs (1), (2), and (4) and removing the words "200 pounds of plums," from subparagraph (3).

§ 917.177 [Removed]

18. Section 917.177 is removed.

§ 917.179 [Amended]

19. Section 917.179 is amended by removing the section designation "917.177" and the word "plums."

§§ 917.454 and 917.460 [Removed]

20. Section 917.454 is removed.

21. Section 917.460 is removed.

Dated: September 5, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–21825 Filed 9–11–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR 1421.5551 *et seq.*

relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. In addition to the grains and oilseeds now permitted, the final rule will authorize warehousemen to store sunflowers, canola, rapeseed, safflower, mustard, and such other oilseeds as the Secretary may determine under the Uniform Grain Storage Agreement.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry Goodall, Storage Contract Division, USDA, room 5968–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–4018.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Information collection requirements contained in this regulation (7 CFR part 1421) have been approved through June 30, 1992, by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560–0009. Public reporting burden for the collection of information contained in this regulation is estimated to average 30 minutes 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 the Department of Agriculture, Clearance Officer, OIRM. room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0009) Washington, DC 20503.

This action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this final rule. In addition, CCC is not required by 5 U.S.C. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed that must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities owned by CCC or which are serving as collateral for CCC price support loans.

Section VII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101–624, requires the Secretary to support the price of oilseeds produced on farms in each of the 1991 through 1995 marketing years. In order to carry out a price support program for oilseeds, adequate commercial grain storage space must be available. Presently the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed permit only wheat, oats, corn, rye, barley, sorghums, flaxseed, and soybeans to be stored under the Uniform Grain Storage Agreement. Therefore, it was proposed that the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed be amended and that sunflowers, canola, rapeseed, safflower, and mustard be included as eligible commodities that can be stored under the Uniform Grain Storage Agreement (An amendment to the Uniform Grain Storage Agreement will be required for those warehouses requesting to participate in the oilseeds storage price support program).

A notice of proposed rulemaking was published by the Department in the **Federal Register** on July 1, 1991, 56 FR 29912, requesting comments with respect to changes in the Standards for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and ended July 31, 1991.

No comments were received concerning the proposed rule. However, the wording in Public Law 101–624, differs slightly from the wording in the proposed rule. The statute requires the Secretary to support the price of oilseeds through nonrecourse loans to producers. These oilseeds included soybeans, sunflower seeds, canola, rapeseed, safflower, flaxseed, mustard seed, and such other oilseeds as the Secretary may determine.

Accordingly, it has been determined that the provisions of the proposed rule, using the wording of the statute, be adopted as a final rule.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1446, and 1447; 15 U.S.C. 714b and 714c.

2. Section 1421.5551, paragraph (a)(1) is revised to read as follows:

§ 1421.5551 General statement and administration.

(a) * * *

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, soybeans, sunflower seed, canola, rapeseed, safflower, mustard, and such other oilseeds as the Secretary may determine under a Uniform Grain Storage Agreement (which commodities are hereinafter referred to as "grain").

* * * * *

Signed at Washington, DC, on September 6, 1991.

Keith D. Bjerke

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-21875 Filed 9-11-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

[T.D. 91-79]

Customs Regulation Amendment Concerning Dutiable Value of Merchandise Transferred From a Foreign Trade Zone

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document is intended to clarify an unintended ambiguity which may exist in the Customs Regulations. Accordingly, it clarifies the Customs Regulations to expressly provide, as Customs originally intended and in accordance with Customs interpretation of the applicable laws, that the dutiable value of merchandise transferred from a foreign trade zone will include the specific costs enumerated in section 402(b)(1) (A–E) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1) (A–E)), together with the price actually paid or payable for the merchandise in the transaction that caused its admission into the zone. This clarification is necessary so that no confusion exists that the valuation of merchandise withdrawn from a foreign trade zone must be in conformity with the valuation laws and the Foreign Trade Zones Act. This technical change is only intended to clarify Customs consistent interpretation of the valuation statute as it relates to the dutiable value of merchandise transferred from a foreign trade zone.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: Virginia Brown or Tom Lobred, Commercial Rulings Division, (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

Foreign trade zones are secured areas to which foreign and domestic merchandise may generally be brought for certain purposes without being subject to the Customs laws of the U.S. The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u), provides for the establishment and regulation of zones, the purpose of which is to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), governs, among other things, the admission of merchandise into a zone, its manipulation, manufacture, destruction or exhibition while in the zone, its removal from the zone, it removal from the zone, and its dutiable value.

Specifically, under section 3 of the Act, as amended, 19 U.S.C. 81c(a), imported and domestic merchandise may be brought into a zone for the purposes therein enumerated without being subject to the Customs laws of the U.S., but "when foreign merchandise is so sent from a zone into customs territory * * * it shall be subject to the laws and regulations of the United States affecting imported merchandise * * *". 19 U.S.C. 81c(a).

In this regard, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, 19 U.S.C. 1401a (TAA), provides that the primary method of appraising imported merchandise is transaction value.

Section 402(b)(1) of the TAA, as amended, 19 U.S.C. 1601a(b)(1), contains five items that must be added to the "price actually paid or payable" for the merchandise in order to arrive at transaction value. These additional items encompass the following: (1) The packing costs incurred by the buyer with respect to the imported merchandise; (2) Any selling commission incurred by the buyer with respect to the imported merchandise; (3) The value, apportioned as appropriate, of any assist; (4) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the U.S.; and (5) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller. Under section 402(b)(1), these items are separately added to the price actually paid or payable if they are not already included in this price.

Section 146.65(b)(2), Customs Regulations (19 CFR 146.65(b)(2)), which governs the dutiable value of imported merchandise admitted into a zone, does not explicitly reference the appraisement provisions of either section 402 or section 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, 19 U.S.C. 1401a, 1500. As a result, § 146.65(b)(2) does not expressly include in the dutiable value of merchandise withdrawn from a foreign trade zone the five statutory items set forth in section 402(b)(1).

The absence of this explicit reference has apparently led to some confusion as to the proper interpretation intended by Customs. For instance, it has been argued that the dutiable value of merchandise withdrawn from a foreign trade zone should not include the five statutory additions to the price actually paid or payable mandated by section 402(b)(1) of the TAA. Customs does not believe that this interpretation is reasonable, nor in conformity with the underlying statutes. The result of this interpretation, for instance, would be inconsistent with the valuation statute an the Foreign Trade Zones Act, particularly the provision mandating that "articles that are produced or manufactured in a zone and sent into the customs territory of the United States are subject to the laws and regulations affecting imported merchandise." 19 U.S.C. 81c(a).

Accordingly, in order to avoid any confusion as to Customs interpretation of the dutiable value of merchandise withdrawn from a foreign trade zone, § 146.65(b)(2) is clarified to make express provision for the five statutory items which must be added to the price actually paid or payable in the transaction that cased its admission into the zone.

Inapplicability of Public Notice Procedures

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provides for instances where public comment procedures are not needed. Specifically, under 5 U.S.C. 553(b)(3)(B), a rule is thus exempt "when the agency for good cause finds [and incorporates the finding and brief statement of reasons therefor in the rule issued] that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest."

In this regard, § 146.65(b)(2) basically implements and applies with respect to foreign trade zones the valuation provisions of existing statutory law, as

required by the Foreign Trade Zones Act. It was previously promulgated upon completion of notice and comment procedures made in accordance with the APA. See T.D. 86–16 (51 FR 5040). The current technical amendment of § 146.65(b)(2) merely states expressly the plain requirements of the valuation statutes which were already implicit, and intended by Customs, in this implementing regulation. Moreover, failure to expressly state these statutory requirements in the regulation itself could confuse the importing public. For these reasons, Customs finds that further notice and public comment would be impractical, unnecessary and not in accordance with the public interest.

For the foregoing reasons, Customs has also dispensed with a delayed effective date. 5 U.S.C. 552(d) (2) and (3).

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

Part 146, Customs Regulations (19 CFR part 146), is amended as set forth below.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–u, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624. * * *

2. Section 146.65 is amended by revising the first two sentences of paragraph (b)(2) to read as follows:

§ 146.65 Classification, valuation, and liquidation.

* * * * *

(b) * * *

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone, plus the statutory additions contained in section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1)), less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost or of the statutory additions, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. * * *

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: August 14, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–21981 Filed 9–11–91; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 177

[T.D. 91–78]

Classification of Garments Composed in Part of Linings or Interlinings of Specialized Fabrics or Nonwoven Insulating Layers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: Customs has, in various rulings, determined that garments composed in part of linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, or with heavy nonwoven insulating layers, were classifiable in Heading 6113 or 6210, Harmonized Tariff Schedule of the United States (HTSUS). The linings made of specialized fabrics and similar linings provide a barrier against wind and outside moisture while allowing the transpiration of water vapor away from the body. Heavy nonwoven insulating layers provide a significant added degree of warmth over that imparted by lighter normal weight insulating layers. Those rulings were based on Customs interpretation of the wording of the above Headings, which provide for garments "made up" of specialized fabrics. Under that interpretation a garment was considered "made up" of any fabric which imparted a significant characteristic to the garment. We now believe that the term "made up" in Headings 6113 and 6210, HTSUS, only refers to that portion of a garment, e.g. the outer shell, which is considered in determining the ultimate legal classification of that garment.

This document, after consideration of the comments submitted in response to a proposed interpretive rule published in the Federal Register of March 20, 1990 (55 FR 10249), modifies Customs prior position and concludes that a specialized fabric garment should be classified on the basis of the outer shell of the garment instead of the fabric which imparts a significant characteristic.

DATES: This change in position is effective December 11, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Commercial Rulings Division, U.S. Customs Service, (202) 566–8181.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the Federal Register on March 20, 1990 (55 FR 10249), it was announced that Customs was inviting public comments on its proposed position regarding the proposed change in the basis of classification of garments "made up" of specialized fabrics. The notice provided Customs reasoning, hereafter noted, as to the reasons for such change.

Heading 5603, Harmonized Tariff Schedule of the United States (HTSUS), provides for "Nonwovens, whether or not impregnated, coated, covered or laminated." Heading 5903, HTSUS provides for "textile fabrics impregnated, coated, covered or laminated with plastics, other than (certain tire cord fabrics)." Customs has determined that garments composed in part of linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, or with heavy nonwoven insulating layers normally going under those headings are legally classifiable under Headings 6113 and 6210, HTSUS. This conclusion, is based on Customs interpretation of the wording in Headings 6113 and 6210, HTSUS, which provides for garments which are, among other things, "made up" of fabrics of Heading 5603 or 5903, HTSUS. The Customs interpretation is at least partially based on the definition

of the term "made up" in Note 7 to Section XI, HTSUS, which generally provides for goods assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded). Customs position, based on various rulings, has been that a garment is "made up" of any fabric which imparts a significant characteristic to that garment. Therefore, a garment may be "made up" of a fabric but not be classified at the subheading level, following General Rule of Interpretation (GRI) 3(b) or (c), HTSUS, as being of that fabric.

The linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, of which some of these garments are composed, provide a barrier against wind and outside moisture while allowing the transpiration of water vapor away from the body. The heavy nonwoven insulating layers of some of the garments provide a significant added degree of warmth over that imparted by lighter normal weight insulating layers.

After a review of the prior rulings, Customs now concludes that it was not appropriate to classify garments based on the composition of their linings, interlinings or nonwoven insulating layers. Therefore, Customs believes that garments consisting of different fabrics should not be classified in Headings 6113 or 6210, HTSUS, unless one of the fabrics listed in those Headings is determined to impart the essential character to the garment in question. Customs also believes that while the aforementioned linings, interlinings or nonwoven insulating layers do impart desirable and, sometimes, necessary feature to garments, it is usually the outer shell which imparts the essential character to the garment because the outer shell normally creates the garment.

Analysis of Comments

Five comments were submitted in response to the proposed interpretive rule published on March 20, 1990. One commenter supported the proposed change. Two commenters stated that linings or interlinings which make a garment water resistant do, in fact, impart the essential character of the garment. Another commenter, whose comments were very product specific, stated that a Gore-Tex® lining or interlining imparts the essential character to a garment—it has a special significance "because it provides a breathable, windproof and waterproof character to the garment." That commenter argued that dictionary definitions of the term "made up" support Customs existing position and that there was no basis to change that position by limiting the scope of that term. It was further asserted that most of the garments in question are described in more than one heading and, therefore, General Rule of Interpretation (GRI) 3(c), HTSUS, will cause those garments to be classifiable under Headings 6113 and 6210, HTSUS. A final commenter expressed concern that Customs was intending to classify all garments, without exception, according to their outer shells with no consideration being given to other portions which are important to those garments.

Customs considered these comments and reviewed its position with respect to the classification of garments with linings, interlinings, or nonwoven insulating layers which are made from fabrics provided for in Headings 5602, 5603, 5903, 5906, and 5907, HTSUS, because, on closer examination of this area, the legal rationale for classifying such garments under Headings 6113 and 6210, HTSUS, appeared questionable.

Heading 6113, HTSUS, provides for "Garments, made up of knitted or crocheted fabrics of Heading 5903, 5906 or 5907." Heading 6210, HTSUS, is similar, providing for "Garments, made up of fabrics of Heading 5602, 5603, 5903, 5906, or 5907", but does not include knitted or crocheted articles, and articles made up of wadding.

Pursuant to Chapter 61, Note 7, HTSUS, and Chapter 62, Note 5, HTSUS, garments which are, *prima facie*, classifiable in Headings 6113 or 6210, HTSUS, and in other headings of Chapters 61 or 62, excluding Headings 6111 or 6209, HTSUS, are to be classified in Heading 6113 or 6210, HTSUS.

The basis for Customs existing position was set out in our ruling of January 30, 1989, file HQ 080947. That ruling concerned the classification of a jacket with a Gore-Tex® fabric interlining. The Gore-Tex® interlining was stated to be made from a fabric classifiable under Heading 5903, HTSUS. The following is the basis for the holding in that ruling classifying the garment under Heading 6210, HTSUS:

> Garments made up of fabrics of Heading 5903, HTSUS, are classifiable in Heading 6210, HTSUS. Section XI, Note 7, defines "made up" articles to include those . . . (e) assembled by sewing, gumming or otherwise. Note 7 does not further define (e). In the General Explanatory Notes, Part II at page 714, it is noted that the expression "made up" articles, assembled by sewing, gumming or otherwise, includes garments. Without further express limitation to the term "made up", Heading 6210 is interpreted to cover any assembled garments which includes a material classified within one of its enumerated headings and which imparts a significant characteristic to that garment.

Headings 6113 and 6210, HTSUS, refer to garments "made up of" certain fabrics. Section XI, Note 7, defines the term "made up" and requires that garments be sewn or otherwise assembled. In other words, a garment must be advanced to such a state that its identity is certain for it to be "made up" within the purview of Note 7.

In view of the wording of Headings 6113 and 6210, Customs believes that a garment containing a plastics coated or laminated fabric insulating layer, is not a garment "made up" of one of those fabrics. In Headings 6113 and 6210, HTSUS, as in Section XI generally, Customs applies Section XI, Note 2 and Subheading Note 2 to determine the textile material to be considered in classifying the merchandise. Subheading Note 2(B)(a) provides that where appropriate, "only the part which determines the classification under general interpretative Rule 3 shall be taken into account." The pertinent portion of Rule 3 requires that where two or more materials are combined in a garment, classification shall be according to the material which provides the essential character to the finished article. In almost all instances (except in the most extraordinary cases), it is our view that the outer shell will provide the essential character.

Although their views are not binding on Customs, we have consulted with classification experts (1) at the U.S. International Trade Commission, (2) in the Canadian, Australian, and United Kingdom Customs services, (3) in the European Community, and (4) at the Customs Cooperation Council. All stated that linings and interlinings should not be considered in determining whether garments are classifiable in Headings 6113 and 6210, HTSUS.

We agree with the above views. A garment, in our opinion, is normally formed or created by its outer shell. Linings, interlinings, and nonwoven insulating fabrics do not form or create a garment. Rather, they add characteristics to the garment which serve to further define the garment and limit or expand the uses for which that garment may be suitable. Thus, the presence of a nonwoven fabric insulating layer may make a jacket suitable for skiing, or a multiple of other cold weather outdoor activities, but it is the outer shell that initially creates the jacket. Similarly, the presence of a waterproof lining or interlining may

make a coat more suitable for use in inclement weather, but it is the outer shell that makes that garment a coat.

Accordingly, it is Customs position that while a heavy nonwoven fabric insulating layer, or a waterproof lining or interlining may contribute substantially to the characteristics of a garment, it is the outer shell of that garment which usually creates its identity (i.e., as a jacket, as pants, etc.) and, therefore, it is the outer shell which imparts the essential character to that article.

Garments which have outer shells of fabrics specified in Headings 6113 and 6210, HTSUS, are classifiable, pursuant to GRI 3(b), under those headings. Garments with linings or interlinings, or nonwoven insulating layers, of the fabrics specified in Headings 6113 or 6210, but which have outer shells of other fabrics, are also classifiable, pursuant to GRI 3(b), according to their outer shell material. It is not necessary to utilize GRI 3(c) in the classification of these garments.

Action

After careful analysis of the comments and following further review of the matter, we have concluded that garments containing linings, interlinings, or nonwoven insulating layers made of fabrics classifiable in Headings 5602, 5603, 5903, 5906, or 5907, HTSUS, which are inserted in the garments to prevent the penetration of moisture or wind, or which are designed to provide warmth to the wearer, are not classifiable in Heading 6113 or 6210, HTSUS, unless the outer shells of those garments are made from fabrics classifiable in one or more of the listed headings. Accordingly, any prior rulings issued by the Customs Service which are contrary to this position are not in accord with the current views of the Customs Service and are hereby revoked by the publication of Customs position in the **Federal Register.**

Authority

This document is published in accordance with § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was Arnold L. Sarasky, Commercial Rulings Division, U.S. Customs Service. However, personnel from other offices participated in its development.

August 9, 1991.

Carol Hallett,

Commissioner of Customs.

Approved:

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-21855 Filed 9-11-91; 8:45 am]

BILLING CODE 4820-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 367

RIN 3220-AA89

Recovery of Debts Owed to the Railroad Retirement Board From Other Government Agencies

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to provide for the administration of its authority under 31 U.S.C. 3716 to recover debts owed to the Board by means of administrative offset from any payments due the debtor from the Federal government.

EFFECTIVE DATES: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513), TDD (312) 751-4701 (FTS 386-4701).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidelines for the administration of the Board's authority under 31 U.S.C. 3716 for recovering debts owed to the Board by offsetting the debt against any payments being made to the debtor (or moneys being held for the debtor) by the Federal government. Section 10 of the Debt Collection Act of 1982 (Public Law 97-365 (31 U.S.C. 3716)) permits an agency to recover debts due it from payments being made by other United States government agencies. However, before agencies may use this recovery procedure a regulation setting forth this authority based on the best interests of the United States, the likelihood of collecting the claim by administrative offset, and for collecting the debt after the six year period for bringing a civil action has expired must be adopted.

Section 10(a) of the Railroad Retirement Act and section 2(d) of the Railroad Unemployment Insurance Act provide that debts arising under those two statutes are to be recovered, unless recovery of the debts is waived. The program of administrative offset authorized by this regulation would supplement the already existing programs of administrative offset from tax refunds (see part 366) and from other benefits paid by the Board (see 20 CFR 255.8 and 350.6).

This rule was published as a proposed rule on April 4, 1991 (56 FR 13788). One comment was received from an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The commentor was concerned that debts it may owe to the Board would be recovered from payments it is due from other government agencies without it having an ability to contest the debt recovery action.

With respect to recovery by offset against money in the hands of another government agency, this part is only applicable to erroneous benefit or annuity payments made under a statute administered by the Board. See § 367.2(a) of the regulation. No employer under the Acts would have such a debt since employers are not paid benefits under any statutes administered by the Board. In addition, for purposes of this type of offset, a debt is defined as one owed by a natural person. See § 367.2(b). In any case, the regulation makes it clear that a debtor must be provided an opportunity under the Board's administrative appeals process and ultimately judicial review to contest the validity of a debt which the Board is seeking to recover by administrative offset. See § 367.2(e) of the regulation. Only after these review procedures have been exhausted may the Board act to recover a debt pursuant to this new regulation.

Although the regulation would not permit a recovery by offset from debts owed the RRB by other than a natural person from other government agencies, the regulation would permit the RRB to offset debts owed the RRB by an individual or corporation from money owed such persons by the RRB. However, before recovery by offset were made the debtor would have an opportunity to contest the debt.

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. There are no information collections, within the meaning of the Paperwork Reduction Act of 1980, required by this regulation.

List of Subjects in 20 CFR Part 367

Administrative practice and procedure, Debt collection.

For the reasons set forth in the preamble, title 20, chapter II, of the Code of Federal Regulations is amended by adding a new part 367 as follows:

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

Sec.
367.1 Purpose and scope.
367.2 Past-due legally enforceable debt.
367.3 Board responsibilities.
367.4 Notification to another agency.
367.5 Notification to debtor.
367.6 Consideration of evidence.
367.7 Change in notification to another government agency.
367.8 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

§ 367.1 Purpose and scope.

The regulations in this part establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716. Among other things, this statute authorizes the Board to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the Board's right to collection of the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government who were charged with the responsibility to discover and collect such debts. This subpart specifies the agency procedures that will be followed by the Board for an administrative offset.

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which resulted from erroneous benefit or annuity payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act or any other statute administered by the Board;

(b) Which is an obligation of a debtor who is a natural person;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least $25.00;

(e) With respect to which the individual's rights described in part 260 or part 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, have been exhausted;

(f) With respect to which either;

(1) The Board's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt as not discharged in the bankruptcy proceeding;

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(i) With respect to which the Board has notified, or has made a reasonable attempt to notify, the individual that the debt is past due, and that unless the debtor repays the debt within 60 days, the debt will be referred to any other agency of the United States government for offset against any money owed that person by that agency; and

(j) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (i) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by such individual, and has determined that the amount of such debt is past due and legally enforceable.

§ 367.3 Board responsibilities.

(a) The Board may delegate to an employee or employees the responsibility for collecting any claims owed the Board by means of administrative offset.

(b) Before collecting a claim by means of administrative offset, the Board must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Board's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Board on a case-by-case basis, in the exercise of its sound discretion. The Board shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, the Board may give due consideration to the debtor's financial condition, and is not required to use offset in every instance in which there is an available source of funds. The Board may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency official responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue.

(e) Administrative offset shall be considered by the Board only after attempting to collect a claim under the statutes administered by the Board except that no claim under this Act that has been outstanding for more than 10 years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the agency who was charged with the responsibility to discover and collect such debts.

§ 367.4 Notification to another agency.

When the Board refers a debt under this part to another agency for collection by means of administrative offset, the Board shall provide a written certification to the other agency stating that the debtor owes the debt (including the amount) and that the provisions of this part have been fully complied with.

§ 367.5 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 367.6 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board, and a determination that all or a portion of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 367.7 Change in notification to another government agency.

If, after submitting notification of liability for a debt to another agency, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the other agency for offset; or

(c) Receives notification that the individual owing the debt has filed for

bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged; the Board will promptly notify the other agency. If the amount of a debt is reduced after referral by the Board and offset by the other agency, the Board will refund to the debtor any excess amount and will promptly notify the other agency of any refund made by the Board. If the amount of debt has increased after referral by the Board but prior to offset by the other agency, then the Board will promptly notify the other agency of such increase.

§ 367.8 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) The Board may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the Board by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Board shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Board has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Board has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards, the Railroad Retirement Act and the Railroad Unemployment Insurance Act including any required hearing or review.

(c) When the Board decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable due process procedures in order that the Office of Personnel Management may identify and flag the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor will be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) In accordance with procedures established by the Office of Personnel Management, the Board may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

(e) If the Board collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Board shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

Dated: September 3, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-21918 Filed 9-11-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-91-42]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of cancellation.

SUMMARY: On July 26, 1991 the Coast Guard was notified by the Barnegat Bay Power Boat Racing Association that this years Barnegat Bay Classic, to be held on August 24, 1991 was being canceled. The implementation of 33 CFR 100.502 for this event was published in the Federal Register on July 23, 1991 (56 FR 33707). This notice cancels the implementation of 33 CFR 100.502 for August 24, 1991, which is hereby withdrawn.

EFFECTIVE DATE: August 24, 1991.

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

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Dated: August 23, 1991.

W.T. Leland,

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

[FR Doc. 91-21948 Filed 9-11-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 910364-1196]

RIN 0651-AA47

Amendment to Interrogatory Practices

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending § 2.120(d)(1) of the rules of practice in trademark cases, which limits the total number of interrogatories that may be served by one party upon another in a trademark interference, concurrent use, opposition, or cancellation proceeding. The amendment shifts, from the responding party to the inquiring party, the burden of filing a motion to determine whether an assertion of an excessive number of interrogatories is well taken; and clarifies the paragraph.

EFFECTIVE DATE: November 12, 1991. The amendment shall be applicable to all inter parts proceedings pending before the Trademark Trial and Appeal Board on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Janet E. Rice by telephone at (703) 308-9300 or by mail marked to her attention and addressed to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the Federal Register on March 7, 1989, at 54 FR 9514, and in the Patent and Trademark Office Official Gazette of March 28, 1989, at 1100 TMOG 137, the PTO proposed amendments to a number of the rules of practice in trademark cases. One of the proposed amendments pertained to § 2.120(d), which then consisted of a single paragraph relating to document production. It was proposed that the section be amended to include a new paragraph (designated "(1)") limiting the number of interrogatories that might be served by one party upon another in a trademark interference, concurrent use, opposition, or cancellation proceeding.

In response to the notice of proposed rulemaking, the PTO received numerous written comments pertaining to proposed § 2.120(d)(1). One individual commented that a party served with excessive interrogatories might make its own count of the questions, answer as many as were allowed under the proposed rule, and not answer the remainder on the ground that supernumerary questions were not authorized. To remedy this problem, the individual suggested that if the proposed rule were adopted, it might be advisable to add "a provision prescribing that relief for an excessive number of interrogatories is a protective order rather than an incomplete response to the interrogatories."

This suggestion, among others, was adopted in final rule notice published in the **Federal Register** on August 22, 1989, at 54 FR 34886, and in the Patent and Trademark Office Official Gazette of September 12, 1989, at 1106 TMOG 26. Thus, final § 2.120(d)(1) included, as its last sentence, the following provision: "If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation."

In addition, the final rule notice indicated that the PTO would monitor the impact of § 2.120(d)(1) carefully and further amend the rule if necessary.

The effective date of the rule amendments specified in the final rule notice was November 16, 1989. Since that time, many attorneys have expressed the opinion, in public meetings relating to trademarks, that it is unfair for a party served with excessive interrogatories to have the burden of filing a motion for a protective order. These attorneys have suggested that the better practice would be to allow the responding party simply to object to the interrogatories on the ground of their excessive number, and leave the propounding party with the burden of filing a motion to compel, if it believes that the objection is not well taken.

Accordingly, in a notice of proposed rulemaking published in the **Federal Register** on April 15, 1991, at 56 FR 15059, and in the Patent and Trademark Office Official Gazette of May 21, 1991, at 1126 TMOG 40, § 2.120(d)(1) was proposed to be revised to substitute a motion to compel for the motion for a protective order.

Written comments were submitted by one firm and ten individuals, three of whom stated their complete approval of the proposed amendment. In addition, the relevant committee of one organization, and the relevant subcommittee of another organization, submitted letters expressing their complete approval of the proposed amendment.

Discussion of Specific Section Being Changed

In this discussion, "Trademark Trial and Appeal Board" is abbreviated as "Board."

Section 2.120(d)(1) now provides that the total number of written interrogatories which a party may serve upon another party pursuant to rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Board, in its discretion, may allow additional interrogatories upon motion therefore showing good cause, or upon stipulation of the parties. A motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and objections to the interrogatories, file a motion for a protective order, accompanied by a copy of the interrogatories which together are said to exceed the limitation.

The paragraph is being revised to provide instead that if a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.

The paragraph is being further revised to add a requirement that if the party serving the interrogatories, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of the section. Paragraph (e) governs motions to compel discovery in inter partes proceedings before the Board, and requires, inter alia, that a motion to compel be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement.

The final paragraph includes one revision that was not included in the proposed paragraph. The present paragraph provides, in part, that "A motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories *proposed to be served*" (emphasis added). Thus, the paragraph clearly contemplates, but does not explicitly state, that a motion for leave to serve additional interrogatories must be filed prior to service of the additional interrogatories. As the result of a written comment filed in response to the notice of proposed rulemaking (see "Response to Comments on the Rule"), and in order to further clarify the paragraph, the foregoing sentence is being revised to read, "A motion for leave to serve additional interrogatories *must be filed and granted prior to the service of the proposed additional interrogatories; and* must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served" (emphasis added).

Response to Comments on the Rule

Comment: Three individuals and the firm objected to the proposed amendment of § 2.120(d)(1).

Two of these individuals asserted their belief that the proposed rule would provide responding parties with a vehicle for abuse and delay. In particular, one of the individuals commented that under the proposed rule, a party served with interrogatories believed to be excessive would be able to assert a general objection thereto, thus delaying its responses to the interrogatories until the propounding party made its required attempt to resolve the matter in good faith; that a party asserting a general objection based on excessive number would not only get to shift the burden of going forward to the propounding party, but also would be able, as a matter of course, to engage in dilatory conduct; and that the party which "wishes to

deviate from the norm (i.e., to object to responding to the interrogatories) should be the party to undertake the burden." In the same vein, the second individual asserted that under the proposed rule, a responding party served with interrogatories even remotely close to 75 would merely object to them on the basis of their number; that the objection would cost the responding party nothing and result in none of the interrogatories being answered; that the responding party could delay making its objection until the last day of the 30- or 45-day period for serving a response to the interrogatories; and that if a motion to compel was filed, the propounding party would have to bear the cost thereof, and there would be a further delay while the Board considered the motion.

The firm commented that the proposed rule "would almost assuredly result in the need to seek the intervention of the Board in close cases or in cases where insufficient time remains for serving further interrogatories because of the close of discovery." The firm expressed its belief that the proposed rule would result in delay, "avoidable encroachments upon the Board's attention and time, additional expense to the parties and the USPTO and the introduction of further uncertainties relating to the timing of testimony periods * * *"

The third individual commented that the proposed rule seems to contemplate repetitive motions to compel. Specifically, the individual expressed his belief that a motion to compel filed in response to a blanket objection based on excessive number "would seem to require an order either (1) restricting the number of interrogatories or (2) requiring answers and objections to be served;" and that to the extent that specific objections, or insufficient answers, were then served, there might be need for a further motion to compel. This individual suggested that a party served with an excessive number of interrogatories should be required to serve answers or specific objections to the first 75 of them, but should be permitted to assert a blanket objection, on the basis of excessive number, to the remainder.

Response: While there is a possibility that the proposed rule may be used by responding parties as a vehicle for abuse and delay, the present rule provides a similar vehicle for propounding parties. That is, if a propounding party serves an excessive number of interrogatories, the responding party must either serve answers and specific objections, even though the interrogatories are excessive in number, or be put to the trouble and expense of filing a motion for a protective order. In essence, both the present rule, and the proposed rule, require the filing of a motion to determine whether an assertion of an excessive number of interrogatories is well taken; the two rules differ in that the present rule places the burden of filing the motion on the responding party, while the proposed rule would place that burden on the propounding party. In addition, the proposed rule does involve some extra delay, since it provides for an intervening blanket objection on the ground of excessive number prior to the filing of the motion to determine whether the assertion of excessive number is well taken. Nevertheless, it appears that the fairer, and preferable, practice is that embodied in the proposed rule. Moreover, a propounding party may avoid the problems envisioned in the comments by fashioning its interrogatories in such a manner that they clearly do not exceed the numerical limitation of § 2.120(d)(1).

It is true that, under the proposed rule, two motions to compel may be necessary. However, two motions may also be necessary under the present rule, namely, the motion for a protective order, and, after that motion has been determined and answers and specific objections have eventually been served (either to the original interrogatories, if the Board finds that they are not excessive, or to reformulated interrogatories not exceeding the limitation), a motion to compel, if the propounding party is dissatisfied with the answers and/or specific objections. Again, the essential difference between the two rules is that under the present rule, the burden of filing the initial motion lies with the responding party, while under the proposed rule, that burden would lie with the propounding party.

The suggestion that a responding party, served with what it believes to be an excessive number of interrogatories, be required to serve answers or specific objections to the first 75 of them, but be permitted to assert a blanket objection, on the basis of excessive number, to the remainder, has not been adopted. Such an approach would simply open up a new area for dispute, that is, a dispute as to whether the responding party has, in fact, answered the first 75 (rather than only the first 74, or whatever). Further, this type of approach might encourage propounding parties to routinely serve an excessive number of interrogatories, in the belief that the responding party may answer all of them, and at least will answer the first 75. Finally, it is believed that the purposes of discovery are better served if a party which has propounded excessive interrogatories is allowed an opportunity to serve reformulated interrogatories not exceeding the limitation, so that the propounding party may, in effect, decide which of the interrogatories, within the numerical limitation, it most wants to have answered.

Comment: One individual expressed approval of the proposed amendment to the rule but suggested a further amendment. The individual commented that the practice under the current rule is that if a party serves more than 75 interrogatories, and the responding party files a motion for a protective order, the propounding party "no longer is permitted to file a motion for leave to file more than 75 interrogatories." The individual suggested that the rule be further amended to explicitly so provide, in order to discourage propounding parties which have served assertedly excessive interrogatories from coupling their motion to compel with a motion for leave to serve additional interrogatories.

Response: The present rule provides, in part, that a motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories *proposed to be served.* It is clear therefrom that a motion for leave to serve additional interrogatories is to be filed *prior* to service of the additional interrogatories, not after the fact, and the Board has so held in a number of cases, declining to entertain such a motion when the motion is filed in response to a motion for a protective order. See *Chicago Corp.* v. *North American Chicago Corp.*, 16 USPQ2d 1479 (TTAB 1990); *Baron Phillippe De Rothschild S.A.* v. *S. Rothschild & Co. Inc.*, 16 USPQ2d 1466 (TTAB 1990); *Towers, Perrin, Forster & Crosby Inc.* v. *Circle Consulting Group Inc.*, 16 USPQ2d 1398 (TTAB 1990); and *Brawn of California Inc.* v. *Bonnie Sportswear Ltd.*, 15 USPQ2d 1572 (TTAB 1990).

However, in order to further clarify the rule, the suggestion has been adopted to the extent that the portion of the paragraph which presently reads, "A motion for leave to serve additional interrogatories must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served.", is being revised to read, "A motion for leave to serve additional interrogatories

must be filed and granted prior to the service of the proposed additional interrogatories; and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served."

Comment: One individual expressed approval of the proposed rule. However, the individual commented that there might be a problem in those cases where a blanket objection on the basis of excessive number is not asserted until after the discovery period has closed; that in those cases, if the propounding party, in response to the objection, voluntarily serves revised interrogatories (rather than filing a motion to compel), the responding party may object to them as untimely, with the result that a motion to compel may be filed. The individual suggested that "to avoid this result, it may be helpful if there is discussion, but not necessarily within the rule, explaining that the service of revised interrogatories, within the scope of the first set, is acceptable."

Response: When a party which has not previously used up its allotted 75 interrogatories serves a set of interrogatories which are excessive in number, and the responding party, in turn, raises the issue of their excessiveness in the manner prescribed in § 2.120(d)(1), it is the practice of the Board to allow the propounding party an opportunity to serve a revised set of interrogatories not exceeding the numerical limitation. *See Pyttronic Industries Inc.* v. *Terk Technologies Corp.*, 16 USPQ2d 2055 (TTAB 1990); *Kellogg Co.* v. *Nugget Distributors' Cooperative of America Inc.*, 16 USPQ2d 1468 (TTBB 1990); *Baron Phillippe De Rothschild, supra; Towers, Perrin, supra;* and *Brawn of California, supra.* This is so even if the discovery period has closed, since the revised set of interrogatories serves as a substitute for the excessive (but timely) set. However, if the revised set of interrogatories is not served until after the close of the discovery period, the scope of the interrogatories included therein may not exceed that of the original interrogatories, that is, the revised set of interrogatories may not request information not sought in the original interrogatories. *See Kellogg Co., supra.* Litigants before the Board are strongly encouraged to follow a similar practice voluntarily, without resort to the Board.

The suggestion of the individual has been adopted to the extent that the preceding paragraph explaining the practice of the Board has been included in this final rule notice.

Comment: Two individuals expressed their general approval of the proposed rule, but suggested further modifications thereof. Each of these individuals indicated a preference for the proposed rule, even if not further modified, over the present rule.

One of the individuals stated that a 30-day period for a responding party to serve a blanket objection on the basis of excessive number is too long; that it is a simple objection to write, requiring no supporting statement, let alone argument; and that the proposed 30-day period would thus needlessly delay discovery, and "might impede or prejudice the inquiring party's discovery if the objection were made near the end of the discovery period." The individual suggested that the proposed rule be modified to require that any objection to interrogatories on the basis of excessive number be served within 15 days of the date of service of the interrogatories.

The second individual suggested that a responding party objecting on the basis of an excessive number of interrogatories be required to include in its objection a brief statement explaining how it believes the total number of interrogatories exceeds 75, if the numbered interrogatories and identified parts and subparts do not exceed 75. Then the propounding party should be required, if it files a motion to compel, to explain how its interrogatories are within the limits of the rule. The rule should also provide that the party objecting to the number of interrogatories may, but need not, respond to the motion to compel. The individual noted that if this suggestion were adopted, a response to the motion to compel would be unnecessary because the objection and the motion to compel would present the total picture for the Board's consideration.

Response: The PTO does not believe that the suggested modifications are necessary at this time. However, the PTO will continue to monitor the impact of § 2.120(d)(1) carefully, and will propose further amendments if circumstances warrant.

Other Conditions

The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The rule change includes no additional or increased fees. Substantive rights to use trademarks are not adversely affected.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble and pursuant to the authority contained in section 41 of the Trademark Act of July 5, 1946, 15 U.S.C. 1123, as amended, 37 CFR part 2 is amended as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.120 is amended by revising paragraph (d)(1) to read as follows:

§ 2.120 Discovery.

* * * * *

(d) *Interrogatories; request for production.* (1) The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may

allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties. A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories; and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories served exceed the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section.

* * * * *

Dated: September 5, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-21984 Filed 9-11-91; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3995-4]

Asbestos NESHAP Training Requirements for On-Site Representative

AGENCY: Environmental Protection Agency.

ACTION: Notice of guidance.

SUMMARY: The purpose of this guidance is to explain how the new Asbestos NESHAP training requirements may be met. The Asbestos NESHAP was revised on November 20, 1990. One of the new requirements of the Asbestos NESHAP is that an on-site representative (such as a foreman or management level person), trained in the asbestos demolition and renovation provisions and the means of complying with them, be present when the regulated asbestos-containing material (RACM) is stripped, removed or otherwise handled or disturbed. Evidence that the required training has been completed shall be posted at the demolition or renovation site and made available for inspection by EPA or the delegated Agency.

EFFECTIVE DATE: November 20, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Omayra Salgado at (703) 308-8728.

SUPPLEMENTARY INFORMATION: The Asbestos School Hazard Abatement Reauthorization Act (ASHARA), signed into law on November 28, 1990, included an amendment to the Asbestos Hazard Emergency Response Act (AHERA) which requires that EPA revise the AHERA Model Accreditation Plan, originally intended only for schools, to extend accreditation requirements to include persons performing asbestos-related work in public and commercial buildings. These requirements would apply to the asbestos removal associated with the demolition and renovation of buildings that are subject to the NESHAP. These requirements may be in effect as early as 1992.

When the Asbestos NESHAP was last revised, these statutory changes had not been foreseen. As a consequence, the Asbestos NESHAP, contained a requirement for training and a refresher course. EPA wishes to avoid duplicative asbestos training requirements, therefore, the Agency has decided to recognize valid accreditation as an AHERA Asbestos Abatement Contractor/Supervisor as satisfying the Asbestos NESHAP training requirements.

The Asbestos Abatement Contractor/Supervisor curriculum is a training program under the current AHERA that meets the NESHAP requirements. Persons are presently required to complete four days of training and then pass an examination to become accredited under this program. Completion of the Asbestos Abatement Contractor/Supervisor training course to comply with the NESHAP training requirement is strongly recommended since all persons performing asbestos-related work will be required to take AHERA training when EPA revises the AHERA Model Accreditation Plan to include public and commercial buildings. In light of this requirement, it would appear to be ill-advised to develop a training course that does not qualify for AHERA accreditation.

Guidance

- Successful completion of the AHERA Model Accreditation Plan course titled Asbestos Abatement Contractor/Supervisor is strongly recommended to satisfy the Asbestos NESHAP training requirements.
- Completion of the Asbestos Abatement Contractor/Supervisor refresher training course every 2 years will comply with the Asbestos NESHAP training requirements. However, completion of the refresher course, every year, is required to maintain AHERA accreditation. For this reason an accredited person probably will need to complete the refresher course each year in order to continue working as an AHERA accredited Contractor/Supervisor, and also to qualify for refresher training.
- Those persons who are accredited as an AHERA Asbestos Abatement Contractor/Supervisor at the time the NESHAP training requirement takes effect (November 20, 1991), will be accredited as a NESHAP on-site representative until the certificate expiration date. Completion of the appropriate AHERA refresher training is required thereafter.

Dated: September 9, 1991.

John B. Rasnic,

Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards.

[FR Doc. 91-21974 Filed 9-11-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-022-IFC]

RIN 0938-AD36

Medicaid Program; State Share of Financial Participation

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

ACTION: Interim final rule with comment.

SUMMARY: Under certain circumstances, States are currently permitted to use voluntary contributions (donated funds) from providers and all revenues from State-imposed taxes, as the State share of the costs of the Medicaid program. There is now widespread use of State donations or other voluntary provider payment programs that unfairly affect the Federal share of Federal Financial Participation (FFP). This practice circumvents the States' statutory obligation to expend funds for medical assistance. Therefore, effective January 1, 1992, this interim final rule requires that the amount of funds donated from Medicaid providers be offset from Medicaid expenditures incurred on or

after this date before calculating the amount of FFP in Medicaid expenditures. It also interprets section 4701(b)(2) of the Omnibus Budget Reconciliation Act of 1990, which added section 1903(i)(10) to the Social Security Act. Section 1903(i)(10), precludes Federal Financial Participation (FFP) in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded for facility expenditures that are attributable to provider-specific State taxes.

DATES: *Effective date:* This interim final rule is effective on January 1, 1992. We expect to publish a final rule as soon as possible after January 1, 1992.

Comment date: Comments submitted in response to this interim final rule will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 12, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–022–IFC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code MB–022–IFC. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Theresa Pratt (301) 966–9535.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

Federal grants to the States for the Medicaid program are authorized under title XIX of the Social Security Act (the Act) to provide medical assistance to certain persons with low incomes. These Medicaid programs are jointly financed by the Federal and State governments and administered by the States. State Medicaid agencies conduct their programs according to a Medicaid state plan approved by the Administrator of the Health Care Financing Administration (HCFA). To carry out the Medicaid program, the State agency pays providers for medical care and services provided to eligible Medicaid recipients.

The Federal government pays its share of Medicaid program expenses to the State on a quarterly basis according to a formula described in sections 1903 and 1905(b) of the Act.

B. Current Statute

Section 1902(a)(2) of the Act requires States to share in the cost of medical assistance expenditures, and permits both State and local governments to participate in the financing of the non-Federal portion of the Medicaid program. This section specifies the minimum percentage of the State's share of the non-Federal costs and requires that the State share be sufficient to assure that the lack of adequate funds from local government sources will not prevent the furnishing of services equal in amount, duration, scope, and quality throughout the State. Section 1903 requires the Secretary to pay each State an amount equal to the Federal medical assistance percentage of the total amount expended as medical assistance under the State's plan. This amount is referred to as Federal financial participation (FFP).

Of special interest in the tax issue are sections 1902(t) and 1903(i)(10) of the Act. Section 1902(t) was added by section 4701(b)(1) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). It states that, except as provided in section 1903(i) (which precludes Medicaid payment for provider-specific taxes imposed on certain facilities), the Secretary may not "deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services." However, section 1903(i) of the Act also was amended by Public Law 101–508. Section 4701(b)(2) of Public Law 101–508 added section 1903(i)(10), effective January 1, 1991, which precludes payment for "any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [sic] with respect to hospitals or facilities."

C. Current Regulations

On November 12, 1985, we published in the **Federal Register** a final rule (50 FR 46652) that established regulations at 42 CFR 433.45 relating to sources of State financial participation. The major provision of that rule was that public and private donations could be used as State's share of financial participation in the entire Medicaid program, instead of only for training expenditures, to which they had been limited by the previous regulation found at § 432.60.

Our intent in eliminating the prior restriction was to permit the States additional flexibility in administering their programs and to reduce the recordkeeping necessary to relate donated funds exclusively to training expenditures. We had not encountered any funding issues concerning the use of donations or other voluntary payments in the limited area of Medicaid training.

The current § 433.45 defines the conditions under which public funds and private donated funds may be used as the State's share in claiming FFP. We permit the use of public funds as the State share if the funds are—

- Appropriated directly to the State or local Medicaid agency;
- Transferred from other public agencies to the State or local agency and under its administrative control; or
- Certified by the contributing public agency as representing expenditures eligible for FFP.

We permit the use of private donations or other voluntary payments as the State share if the funds—

- Are transferred to the Medicaid agency and under its administrative control; and
- Do not revert to the donor's facility or use unless the donor is a non-profit organization, and the Medicaid agency, of its own volition, decides to use the donor's facility.

The regulations do not address the remedy that would be used if a donation or other voluntary payment which did not meet the conditions of the regulation were received from providers.

There are no regulations limiting the State's use of any tax revenue for its share in the costs of the Medicaid program.

D. Program Experience

The current regulation concerning donated funds (42 CFR 433.45) precludes States from using as the State share of Medicaid expenditures, donations or other voluntary payments that are made by private for-profit hospitals and that are to be returned to the hospitals in the form of Medicaid payments. However,

several States have been using donations or other voluntary payments in a way that effectively alters the statutory cost sharing formula. We believe that States' use of donations or other voluntary payments results in effectively increasing the Federal share of Medicaid costs without an increase in either State expenditures or services. Consequently, States using donated funds are obviating their statutory obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. Before we published the proposed rule (discussed below in section II. of this preamble) concerning donated funds and taxes in the **Federal Register** on February 9, 1990 (55 FR 4626), we were aware of only a few such cases, but since then, and particularly since the enactment of Public Law 101–508, we have seen the development of many additional donation or other voluntary payment programs in the States, with major consequences on Federal payments. At present, we believe that approximately 19 States are using funds donated from providers to finance part of the State share of Medicaid costs. The effect on FFP of these programs is approximately $2.1 billion in FY 1991. In addition, we know that several other States are considering the use of donated funds. If these programs are implemented, additional amounts of FFP would be involved.

II. Provisions of the Proposed Regulation

As noted above, HCFA published a proposed rule in the **Federal Register** on February 9, 1990. It would have affected States' ability to use as the State share of Medicaid expenditures funds donated from providers and derived from taxes imposed by States uniquely to providers. Specifically, the rule proposed that all funds donated from providers and the Medicaid program's share of revenues derived from provider-specific taxes or other mandatory payments be offset from nominal or cash Medicaid expenditures before calculating the Federal share of Medicaid expenditures.

The basis for this proposal was that a number of States had used provider donations and other voluntary payments and revenue from provider-specific taxes to fund part or all of the State share of Medicaid payments. We believed that, since the donation or other voluntary payment or tax or other mandatory payment revenue received from providers effectively reduced the expenditure made by the State for medical assistance costs and reduced the payment received by providers, the FFP should be based upon the "net expenditure" made by the State. In the Notice of Proposed Rulemaking (NPRM), we defined the net expenditure as the amount of the nominal or cash expenditure for Medicaid services, less the amount received from the providers in the form of donations or other voluntary payments or the Medicaid program's share of tax revenues.

HCFA's belief that FFP should be based on the "net expenditure", and not the nominal or cash expenditure made by the State was illustrated by an example in the NPRM. In the example, we assumed that a State wished to pay a hospital bill of $100. The Federal share of this payment (assuming a 75/25 Federal/State match in the sample State) would be $75. If the State received a $25 donation from the provider to be used as the State's share of the payment, the State, without making an expenditure of its own, would use these donated funds to draw down the $75 Federal share and pay the provider $100. The effect of this transaction is that the provider would receive only a $75 net payment. The $100 nominal or cash expenditure of the State would be reduced by the amount of the provider's donation. The net payment of $75 would be totally comprised of Federal funds.

The proposed rule would have required the nominal payment to be reduced or offset by the amount of the funds donated from the provider before calculation of FFP. In the example above, reducing the nominal expenditure of $100 by the amount of the donation would have resulted in a Federal matching payment of $56.25 (75 percent of the net expenditure of $75).

The proposed rule would have used the same procedure for State-imposed provider-specific taxes. These taxes, which we said might be described as coerced donations, have the same outcome of effectively reducing States' expenditures for Medicaid payments. However, the rule also proposed that the amount of the offset would be determined by the Medicaid program's share of the tax payment.

The proposed rule would have required that revenues derived from taxes (for example, sales and excise taxes) imposed by a State on the State's Medicaid payments for services be deducted from nominal expenses in order to determine the level of FFP. In some cases, States have imposed taxes on items or services which, when purchased by Medicaid recipients, would have to be paid by the State Medicaid agency. However, while State agencies pay the provider for the items or services, they fail to pay the provider for the tax. Instead, the State agencies claim entitlement to FFP calculated on the amount of the services and the imposed tax. Since the State agency never paid the tax to the provider, it did not make an expenditure. Accordingly, there is no basis for a claim for FFP on the imposed tax. This provision was included in the proposed rule to preclude States from imposing a tax on items which, when purchased by Medicaid recipients, would have to be paid by the State. The provisions of Public Law 101–508 specifically amend the Act to preclude payment for any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State solely with respect to hospitals or facilities. This being the case, nothing in Public Law 101–508 was intended to permit States to claim FFP for any imposed tax when the State, county, or other governmental instrumentality fails to pay the provider for the tax.

III. Discussion of Comments

We received 79 items of timely correspondence from individual hospitals, hospital associations, various levels of State and local governments, and a number of national organizations. Only a few commenters supported the rule. The majority of comments we received urged HCFA to eliminate or to modify the proposal. The specific comments received and our responses to them are as follows:

Comment: One commenter requested clarification of the effective date of the proposed rule.

Response: These regulations are effective on January 1, 1992. When calculating State expenditures that are claimable for FFP on or after January 1, 1992, HCFA will subtract from nominal State expenditures the amount of any revenue generated by either donations or other voluntary payments by or on behalf of health care providers or State-paid taxes for medical assistance expenditures.

FFP is not available for that portion of State, county, or other governmental instrumentality repayment applicable to facilities for costs attributable to the Medicaid portion of a provider-specific tax or other mandatory payment; that is, a tax or other mandatory payment imposed by the State solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. If any level of the State government imposes a provider-specific tax or any other mandatory payment, and if any level of the State

government reimburses these providers for the costs attributable to the tax or other mandatory payment imposed, the specific amount ineligible for Federal matching is limited to the lesser of the provider-specific tax or any other mandatory payment related to the Medicaid program or the amount of extra reimbursement received for such payments.

Comment: A number of commenters questioned HCFA's authority to issue the proposed regulation. Many of these commenters believed the proposal was not supported by any authority in the Act limiting the sources of the State share of Medicaid expenditures. Others felt the proposal was unconstitutional and interfered with a State's right to levy taxes.

Response: HCFA does not agree with these comments. Nothing in the proposed rule would have in any way limited a State's flexibility to impose taxes or other mandatory payments, or to receive donations or other voluntary payments from Medicaid providers. Rather, the proposal would have set forth the consequences on FFP of donations or other voluntary payments and provider-specific taxes or other mandatory payments. In our view, this regulation is based upon sections 1903 and 1905 of the Act. These provisions of the Act provide for FFP in State expenditures for medical assistance. Donations or other voluntary payments, when used as the State share of the FFP payment, permit States to receive the Federal share for medical assistance without making any expenditures of their own. Since our analysis has led us to conclude that funds received by States from provider donations or other voluntary payments effectively reduce the expenditure actually made by the State on payments to these providers, the FFP should be based upon the net expenditure made by the State and should not be permitted to be affected by a State's use of revenues from donations or other voluntary payments.

Comment: Several States and hospitals expressed the view that the proposed regulation would limit States' ability to use these funds for program growth and expansion, and would have a negative impact on the accessibility and quality of care provided to Medicaid recipients.

Response: HCFA agrees that the proposed offset would impact on State's use of these funds. Nonetheless, HCFA supports States' efforts to expand and improve their programs, and will certainly share in the costs of these improvements as provided in the Medicaid statute. We do not believe that States should be permitted to use donated funds, however, in a way that effectively alters the statutory cost sharing formula. We believe that States' use of donations or other voluntary payments has the result of effectively increasing the Federal share of Medicaid costs without an increase in State expenditures. Consequently, States using donated funds are obviating their statutory obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. While HCFA supports States' expansion efforts, it does not believe the cost of these expansions should fall on the Federal government in violation of the statutorily authorized cost-sharing formula.

Comment: One State Medicaid agency expressed its view that the proposal would create an atmosphere which would encourage States to manipulate the system for funding the State share.

Response: On the contrary, HCFA believes that the present system, under which States and providers are permitted to engage in a variety of donation or other voluntary payment programs aimed at maximizing FFP, leads to manipulation of the system. HCFA would reiterate that the proposal would require that funds donated from providers would be offset from nominal or cash expenditures made by States for medical assistance payments before calculating FFP. This procedure would permit FFP to be based on the net expenditures made by States and FFP would not be affected by the States' use of donated funds.

Comment: One commenter criticized the example included in the NPRM of the effect of donations or other voluntary payments on FFP. This example used a 75 percent Federal matching rate. The commenter expressed the view that, since few States have such a high Federal match rate, the example overstated the general effect of donated funds.

Response: We agree with the comment to the extent that most States have matching rates below the level assumed in the example. As the commenter noted, the effect of donations or other voluntary payments on FFP is proportional to the matching rate. The example assumed a 75 percent matching rate for two reasons. First, this was approximately the match rate of the State described in the example. Second, we wanted to illustrate the impact that donations or other voluntary payments have on FFP. While the specific cost impact is, of course, dependent on the specific Federal matching rate, the example is valid in that it illustrates our belief that provider donations or other voluntary payments serve to increase the real Federal share of Medicaid expenditures.

Comment: Several commenters asked if HCFA inadvertently had omitted the material in the current § 433.45(a), which outlines when public funds may be used as the State share.

Response: Neither the proposed rule nor this interim final rule precludes States from receiving provider donations or other voluntary payments. However, in both the proposed rule and in this interim final rule, we intentionally revised § 433.45(a) to describe how a State's net expenditure for medical assistance is calculated in the presence of provider donations, tax revenues, or other payments made directly or indirectly to the State, County, or any other governmental instrumentality from or on behalf of health care providers. Section 433.45(d) will apply equally to all types of provider donations or voluntary payments, both public and private, and will offset any monies received from provider donations or voluntary payments in order to determine the true net expenditure for the Federal match. With respect to provider-specific taxes or other mandatory provider-specific payments, FFP is not available for payment to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded for the portion of the costs applicable to the Medicaid program.

Comment: One commenter expressed concern that the proposed § 433.45(e) (1) and (2), which set forth the methodology for offsetting provider-specific taxes from State Medicaid expenditures, were difficult to understand and should be clarified.

Response: As a result of the provisions of section 4701(b)(1) of Public Law 101–508 (discussed above in the "Background" portion of this preamble), these paragraphs have been deleted in their entirety. In addition, since nothing in Pub. L. 101–508 permits States to claim FFP for any imposed tax when the State, county, or other governmental instrumentality fails to pay the provider for the tax, the proposed § 433.45(f) has been deleted.

Comment: Several commenters expressed concern that the proposed rule was overly broad and that clarification of these terms is needed: offset, provider, transfer of funds, unfairly affecting FFP, nominal versus real, organizations related to the State government, fund, and instrumentality. Additionally, some commenters expressed concern that this rule would prohibit intergovernmental transfers.

Response: The term "health care provider" has been clarified. We do not agree that other terms in the proposed rule were overly broad or in need of additional clarification. The proposed rule published on February 9, 1990 contained either an explicit definition or an illustration of each of the terms listed above. With respect to intergovernmental transfers, neither the proposed rule nor this interim final rule prohibit such transfers.

However, this interim final rule redesignates proposed § 433.45(g) as § 433.45(e) and revises it to clarify that, when calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures incurred on or after January 1, 1992 the amount of any revenue to the State generated by health care providers if that revenue results from donations or other voluntary payments made by or on behalf of the providers to the State, County, or any other governmental instrumentality. Additionally, repayment of a provider-specific tax or any other mandatory payment that can be considered applicable to the Medicaid program does not qualify as an allowable expenditure for Federal matching purposes.

To illustrate, if a local government accepts and transfers to the State Medicaid Agency donations or other voluntary payments received directly from health care providers or indirectly from organizations that received donations or other voluntary payments from health care providers, this revenue is ineligible for Federal matching funds.

With respect to taxes or other mandatory payments, this interim final rule affects the availability of Federal matching funds for that portion of States' payment of the costs attributable to the Medicaid portion of a provider-specific tax or other mandatory payment, that is, a tax or mandatory payment imposed by the State solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. If any level of the State government imposes a provider-specific tax or any other mandatory payment, and if any level of the State government reimburses these providers for the costs attributable to the tax or mandatory payment imposed, the specific amount ineligible for Federal matching is limited to the lesser of the provider-specific tax or any other mandatory payment related to the Medicaid program or the amount of extra reimbursement received for such payments.

IV. Provisions of this Interim Final Rule with Comment

This regulation is being published as an interim final rule with comment for two reasons. First, Congress imposed a moratorium on issuing a donated funds regulation in section 8431 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647). It prohibited the Secretary from "issuing any final regulation prior to May 1, 1989, changing the treatment of voluntary contributions * * * utilized by States to receive Federal matching funds under" Medicaid. The May 1st date has been extended several times since. Most recently, in section 4701(a) of Public Law 101–508, the date was extended to December 31, 1991. We plan to republish this interim final rule as a final rule as soon as possible after January 1, 1992.

Additionally, when the proposed rule was published, most State financial programs were based on tax funding mechanisms. Since then, the situation has changed dramatically; there is now widespread use of State donation or other voluntary payment programs that unfairly affect the Federal share of FFP. We wish to obtain additional public comments on our specific efforts to curtail State abuse of donation or other voluntary payment programs. We believe that publishing an interim final rule with comment will give us maximum flexibility and will give interested parties another opportunity to express their concerns. Although we could issue this as a final rule, we want to obtain additional comments, specifically on those portions relating to donations or other voluntary payments, before January 1, 1992.

Section 4207(j) of Public Law 101–508 grants the Secretary the authority to issue regulations (on an interim or other basis) as may be necessary to implement the provisions of Public Law 101–508. Therefore, we have included in this regulation a provision at the new § 433.45(f) implementing section 4701(b)(2) of Public Law 101–508, which amended section 1903(i) of the Act. It precludes FFP in State repayment of provider-specific taxes or any other mandatory payments.

The provisions of this interim final rule with comment differ from the provisions of the proposed rule published in the Federal Register on February 9, 1990 in three major respects:

In the proposed rule, we suggested adding a paragraph (c) to § 433.45 ("Determining the level of State expenditures for FFP purposes."). It would have stated that, when calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures the amount of any revenue to the State generated by or on behalf of health care providers when that revenue results from donations made to the State by the providers or results from taxes applied uniquely to providers. This procedure also applies to State revenues generated by taxes paid by the State that are imposed on payments for Medical Assistance. In this interim final rule with comment, we have changed § 433.45(c) to read, "When calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures incurred on or after January 1, 1992, the amount of any revenue to the State generated by or on behalf of health care providers when that revenue results from either donations or other voluntary payments made to the State, county, or any other governmental instrumentality, by or on behalf of health care providers. FFP is not available for that portion of States' repayment applicable to the Medicaid program to facilities for costs attributable to a provider-specific tax or other mandatory payment; that is, a tax or mandatory payment imposed by the State, county, or any other governmental instrumentality solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

If any level of the State government imposes a provider-specific tax or any other mandatory payment, and if any level of the State government reimburses these providers for the costs attributable to the tax or mandatory payment imposed, the specific amount ineligible for Federal matching is limited to the lesser of the provider-specific tax or any other mandatory payment related to the Medicaid program or the amount of extra reimbursement received for such payments."

We also proposed adding a new paragraph (e) to § 433.45. It would have stated that, "Unless a tax has been levied on all businesses or entities in the State and does not uniquely affect health care providers, revenues from taxes are offset from State expenditures". In this interim final rule with comment, we have deleted that paragraph. We have added a paragraph (f) to § 433.45. It states that FFP is not available for that portion of States' repayment applicable to the Medicaid program to facilities for costs attributable to a provider-specific tax or any other mandatory payment, a tax or other mandatory payment that is paid by a provider and is imposed solely with

respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. A tax or mandatory payment is imposed solely with respect to one or more of those three entities if no other entity is subject to the identical tax or payment. For example, assume a situation in which hospitals, nursing facilities, and intermediate care facilities for the mentally retarded are subject to a 5 percent flat tax on general revenues, while pharmacies are subject to a 1 percent flat tax on general revenues. Under that scenario, the presence of the 1 percent pharmacy tax does not alter the fact that, for the purposes of section 1903(i)(10) of the Act, the 5 percent tax is imposed solely with respect to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded. Similarly, even if the above hypothetical example were changed so that all four entities were subject to the same nominal tax rate (that is, 5 percent), pharmacies would still not be subject to the identical tax imposed with respect to the other three entities if the tax base prescribed for pharmacies differs from that of the other groups, or if the exclusions, deductions, or credits available to pharmacies differ from those available to the other groups. These examples are illustrative; taxes may differ in other respects so that the tax imposed with respect to one entity is not the same as the tax imposed with respect to another entity.

A provider is reimbursed for the costs attributable to the tax when any one of the following conditions is met:

—A cost-reimbursed provider includes the cost of the tax on its cost report.

—A provider paid on a prospective basis includes the cost of the tax in its base year costs for payment rate calculation.

—There is linkage between payment to the provider and the tax program. For example, this linkage is deemed to exist when any of the following conditions is met:

+ The payment (for example, disproportionate share hospital adjustments) significantly is correlated to the provider's tax payment.

+ A provider is "held harmless" for its tax payment by an effective guarantee that its enhanced payment will be a substantial portion of the cost of the tax.

+ The increase in provider payments integrally is related to the tax program. Examples of this (integral relation) would be dedicated use of the tax revenue in a special fund or account to be used for enhanced provider payments, or statements of legislative purpose in State enabling legislation establishing a linkage.

The first two changes were made to conform to the provisions of section 4701(b)(1) of Public Law 101–508, which added paragraph (t) to section 1902 of the Act. Section 1902(t) generally precludes the Secretary from limiting payments to a State for medical assistance, attributable to taxes imposed by the State. Because of this provision, we have modified the portion of the proposed rule which would have required offset of the Medicaid program share of revenues attributable to provider-specific taxes or any other mandatory payments.

The third change is consistent with our interpretation of section 4701(b)(2) of Public Law 101–508, which amended section 1903(i) of the Act. Section 1903(i) now precludes FFP in State payments to hospitals, nursing facilities (NFs), and intermediate care facilities for the mentally retarded (ICFs/MR) to reimburse the facility for the cost attributable to the tax imposed by the State solely with respect to hospitals or facilities. This provision of the regulation in no way precludes States from levying provider-specific taxes or any other mandatory payments.

Finally, two provisions of the proposed rule have been clarified. The proposed definition of "health care provider" has been restructured and language has been added that more explicitly defines what the proposed definition meant by "a relative of a provider". In addition, the proposed § 433.45(g), entitled, "Other transfers", has been renumbered as § 433.45(e) and retitled, "Other payments", and changed to clarify our policy on other payments.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim final rule that meets one of the Executive Order 12291 criteria for a "major rule"; that is, that is likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612 requires us to prepare an analysis of any regulation or other policy statement or action that is likely to have substantial direct effects on the operations of State or local governments, limit State discretion in the administration of programs, or preempt State law.

In addition, we generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we consider all providers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any interim final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Effect on Program Expenditures

In the last several years, States have increased dramatically their use of donations or other voluntary payments and tax payments from health care providers to increase the Federal share of Medicaid expenditures. Effective January 1, 1992, this interim final rule with comment requires that the amount of funds donated from Medicaid providers be offset from Medicaid expenditures before calculating the amount of FFP in Medicaid expenditures. Currently, States tax and seek donations or other voluntary payments from Medicaid providers specifically and use these funds as their share of Medicaid expenditures. The taxes or other mandatory payments and donations or other voluntary payments generate additional Federal matching funds for the States without the expenditure of State funds. This interim final rule with comment also implements section 4701(b)(2) of Public Law 101–508, which precludes FFP in State payments to hospitals, nursing facilities and intermediate care facilities for the mentally retarded for facility costs that are attributable to provider-specific State taxes. We estimate that approximately 19 States use provider tax programs and 19 use provider

donation or other voluntary payment programs which will generate an estimated $3 billion in Federal matching funds in FY 1991. We believe programs like these will generate even more Federal matching funds as more States move to implement provider tax or other mandatory payment or donation or other voluntary payment programs.

It is difficult to anticipate precisely what action States will take as a result of this interim final rule. Since the effect of this interim final rule with comment could exceed the $100 million threshold, it is a major rule under Executive Order 12291 and a regulatory impact analysis is required. Furthermore, since this interim final rule with comment could have a significant economic impact on some small entities, we are preparing a voluntary analysis to conform to the objectives of Executive Order 12612, the RFA, and section 1102(b) of the Act.

C. Effect on Providers

As a result of this interim final rule with comment, State programs may shift away from donations or other voluntary payments and disallowed provider-specific tax or any other mandatory payment programs to mechanisms which fall outside this regulation.

According to Office of Inspector General (OIG) Report No. A–14–91–01010, dated May 10, 1991, one State enacted a provider tax program to tax noninstitutional Medicaid providers. The State increased fees to the providers and then deducted the increase from their payments as a tax. The State will then use the "tax revenue" as the State's share of the payments and report the total payment for Federal matching. Other States may resort to the use of similar provider tax programs to generate additional Federal matching funds, since this interim final rule with comment restricts the use of provider donation or other voluntary payment programs as a State's share in Medicaid expenditures.

In addition, some States have directly linked donation and other voluntary payment programs to increases in Medicaid hospital payment rates. Other States have levied taxes or other mandatory payments on providers and modified Medicaid payment rates in such a way as to reimburse the provider for the cost of the tax. Thus, it might be argued that this interim final rule with comment could preclude providers from an opportunity to receive increased payments for services furnished to Medicaid recipients. We concede that this might be true, but only to the extent that the State is unable to find alternative sources of State funds to finance these increases in payment rates.

D. Conclusion

In keeping with the requirements of Executive Order 12612, we have determined that we are facing a problem of national scope. States using donated funds are circumventing their obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. Therefore, we are justified in requiring the offset of provider donations or other voluntary payments and certain taxes or other mandatory payments from the nominal or cash Medicaid expenditures before calculating the Federal share of Medicaid expenditures.

Moreover, the provision of this interim final rule with comment that precludes FFP in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded which reimburse the facility for the cost attributable to the tax imposed by the State solely with respect to hospitals or facilities, is consistent with our interpretation of section 4701(b)(2) of Public Law 101–508, which amended section 1903(i) of the Act.

This interim final rule with comment will in no way preclude States from increasing their share of Medicaid expenditure from other sources.

VI. Information Collection Requirements

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

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of that rule.

VIII. List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 433, subpart B is revised as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

Subpart B—General Administrative Requirements

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396(p).

2. Section 433.45 is revised to read as follows:

§ 433.45 Determining the level of State expenditures for FFP purposes.

(a) *Purpose.* This section describes how a State's net expenditure for medical assistance is calculated in the presence of donations, tax revenues or other transfers to the State from those who receive Medicaid payments from the State.

(b) *Definitions.* As used in this section unless the context indicates otherwise:

(1) *Health care provider* includes any—

(i) Medicaid providers;

(ii) Organization or association of which Medicaid providers are members;

(iii) Person who has an ownership or control interest (as defined in section 1124(a)(3) of the Social Security Act) in a Medicaid provider;

(iv) Spouse, parent, child, or sibling of an individual described in paragraphs (b)(1) (i) through (iii) of this section; or

(v) Individual or entity that is a major customer or supplier of a Medicaid provider.

(2) *Net expenditure* means the amount of a State's cash or nominal expenditures for Medicaid services, reduced by the revenues derived from either donations or other voluntary payments made by or on behalf of health care providers.

(c) *General rule.* When calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures incurred on or after January 1, 1992, the amount of any revenue to the State generated by health care providers when that revenue results from either donations or other voluntary payments made to the State, county, or any other governmental instrumentality, by or on behalf of health care providers. FFP is not available for that portion of States' repayment applicable to facilities for

costs attributable to the Medicaid portion of a provider-specific tax; that is, a tax imposed by the State, county, or other governmental instrumentality solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. If any level of the State government imposes a provider-specific tax or any other mandatory payment, and if any level of the State government reimburses these providers for the costs attributable to the tax imposed, the specific amount ineligible for Federal matching is limited to the lesser of the provider-specific tax or any other mandatory payment related to the Medicaid program or the amount of extra reimbursement received for such payments.

(d) *Donations.* Effective January 1, 1992, when a donation or other voluntary payment is made by or on behalf of a health care provider to the State, county, or other governmental instrumentality, the revenue from the donated amount is offset and subtracted from the State's nominal expenditures.

(e) *Other payments.* Effective January 1, 1992, the general rule set forth in paragraph (c) of this section and the rule set forth in paragraph (f) of this section apply to any voluntary or mandatory payment of funds. In the case of donations or other voluntary payments made by or on behalf of health care providers or related organizations either directly or indirectly to State, county, or any other government instrumentality, HCFA subtracts these payments from nominal State expenditures in accordance with paragraph (c) of this section. With respect to provider-specific taxes or any other mandatory provider-specific payments, FFP is not available for that portion of States' repayment applicable to the Medicaid program in accordance with paragraph (f) of this section.

(f) *Provider-specific taxes.* Effective January 1, 1992, FFP is not available for that portion of States' repayment applicable to the Medicaid program to facilities for costs attributable to a provider-specific tax, that is, a tax or other mandatory payment that is paid by a provider and is imposed solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. A tax or other mandatory payment is imposed solely with respect to one or more of those three entities if no other entity is subject to the identical tax or mandatory payment. Examples of taxes which are not identical are those with different nominal tax rates, different tax bases, or different exclusions, deductions, or credits available to the provider. A provider is reimbursed for the costs attributable to the tax when any one of the following conditions is met:

(1) A cost-reimbursed provider includes the cost of the tax on its cost report.

(2) A provider paid on a prospective basis includes the cost of the tax in its base year costs for payment rate calculation.

(3) There is linkage between payment to the provider and the tax program. For example, this linkage is deemed to exist when any of the following conditions is met:

(i) The payment (for example, disproportionate share hospital adjustments) significantly is correlated to the provider's tax payment.

(ii) A provider is "held harmless" for its tax payment by an effective guarantee that its enhanced payment will be a substantial portion of the cost of the tax.

(iii) The increase in provider payments integrally is related to the tax program. Examples of this (integral relation) would be the dedicated use of the tax revenue in a special fund or account to be used for enhanced provider payments, or statements of legislative purpose in State enabling legislation establishing a linkage.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 6, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 6, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–22001 Filed 9–10–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R–125]

RIN 2133–AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Correction

AGENCY: Maritime Administration, DOT.

ACTION: Correction in interim final rule.

SUMMARY: The Maritime Administration ("MARAD") is issuing this notice to correct parts of the interim final rule which appeared in the **Federal Register** on Wednesday, July 3, 1991 (56 FR 30654).

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366–5712.

SUPPLEMENTARY INFORMATION: Section 102 of Public Law 100–710, that became effective on January 1, 1989, amended and codified the former Ship Mortgage Act of 1920, parts of which MARAD administers. In implementing the changes effected by section 102 of Public Law 100–710, MARAD initially published an interim final rule on February 2, 1989, with opportunity for public comment (54 FR 5382), followed by a notice of proposed rulemaking (NPRM) on April 13, 1990 (55 FR 14040) and a second interim final rule on July 3, 1991 (54 FR 30654), again with opportunity for public comment.

The July 3, 1991 interim final rule states, in §§ 221.11 and 221.13, circumstances under which MARAD approval of transactions involving transfers of vessel interests to noncitizens is required. In this regard, § 221.11(c) specifies four types of vessels that, by statute, do not require MARAD approval if operated exclusively and with *bona fides* for one or more of the described uses when appropriately documented by the U.S. Coast Guard. Reference in that section to operation "under the appropriate license or endorsed registry" is incorrect. The language should have been identical to that appearing in § 221.23(a), Notice/approval of noncitizen mortgagees. The latter reference is technically correct under the documentation laws (Chapter 121, Title 46, United States Code). Accordingly, MARAD is conforming this description in § 221.11(c) to that in § 221.23(a), to read, "under a Certificate of Documentation with an appropriate endorsement". Section 221.15(c)(4), in providing for forfeiture of the vessel as penalty for failure to obtain MARAD approval for the foreign transfer of documented vessels other than for scrapping fails to cite, as authority, 46 App. U.S.C. 808. MARAD is correcting that inadvertent omission by making reference to 46 App. U.S.C. 808 in that section. In addition § 221.29 was incorrectly designated as § 221.31.

Accordingly, 46 CFR part 221 is corrected as follows:

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 2, 9, 37, 41 and 43, Shipping Act, 1916, as amended: Secs. 204(b) and 705, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195); 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

2. Section 221.11 is amended by correcting paragraph (c) to read as follows:

§ 221.11 Required approvals.

* * * * *

(c) The approvals required by paragraph (a) of this section are not required for the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or Transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

(1) A Fishing Vessel;
(2) A Fish Processing Vessel;
(3) A Fish Tender Vessel; and
(4) A Pleasure Vessel.

A vessel of a type specified in paragraphs (a)(1)–(3) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a coastwise endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto.

* * * * *

§ 221.15 [Corrected]

3. In § 221.15(c)(4) the citation at the end of the first sentence is corrected to read "46 App. U.S.C. 808 and 839."

§ 221.31 [Redesignated as § 221.29]

4. Section 221.31 title "Approval of corporate citizen trustee" is correctly redesignated as § 221.29.

Dated: September 6, 1991.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 91–21817 Filed 9–11–91; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 560 and 572

[Docket No. 91–02]

Electronic Filing of Agreement Reports and Minutes

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") amends its rules regarding filing of reports and minutes by agreement parties to permit direct electronic transmission. This amendment is an accommodation to the continuing growth of electronic data interchange and should benefit filers and the Commission.

EFFECTIVE DATE: Effective October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission's rules regarding agreement filings (parts 560 and 572 of title 46 CFR) contain requirements for filing of various reports including minutes, shipper requests and complaints and indices of documents. The current rules contemplate such filings being made in hard paper copy.

Given the general proliferation of the use of electronic data interchange both at the Commission and in the industry, the Commission in this proceeding has proposed [1] to permit, but not mandate, the filing of such agreement reports and minutes through direct electronic transmission to Commission headquarters. As stated in the proposed rulemaking, the proposal contemplates modem to modem transfer of ASCII text. The Commission would use an AT class personal computer, 2400 baud modem and FMC-developed communication software which would be compatible with any communications software used by filers. Transmission would be limited to certain hours of Commission business days; *viz.* after 2 p.m. Eastern time, but would be allowed during nonbusiness hours of the Commission. This arrangement is designed to accommodate filing parties located in different time zones and to avoid the need for the Commission to dedicate a terminal full time for this purpose.

The Commission's rules currently provide that certain agreement report filings are to be certified by an agreement official. This requires inclusion of the signature of the certifying official. Accordingly, the Proposed Rule provided for the issuance of a Personal Identification Number ("PIN") to satisfy the signature requirement. Parties seeking to use the electronic filing system would submit a statement in advance agreeing that inclusion of the PIN in the transmission constitutes the signature of the certifying official. The Proposed Rule also contemplates use of passwords to prevent unauthorized filings. The password would be unique to each electronic filer.

Finally, the Proposed Rule clarifies requirements in 46 CFR part 572 for hard copy filings to reflect the current division of responsibility at the Commission *viz.*, that terminal agreement filings are to be lodged with the Bureau of Domestic Regulation and other agreement filings are to be lodged with the Bureau of Trade Monitoring.[2]

Comments to the Notice of Proposed Rulemaking were submitted by several major ocean common carrier conferences.[3] These commenters all generally support the basic thrust of the rule, but urge either clarification or revision in part.

Commenters generally questioned the provision of the Proposed Rule which would limit the issuance of a PIN to one for each agreement, especially if that provision is intended to be restricted to cover only a single designated person. Commenters point out that typically conference agreement submissions might be prepared and signed by any of several different persons representing different committees or rate groups or different levels of agreement officials. Commenters request that provision be made for multiple duly designated persons per agreement to be covered by PINs.

We agree that the proposed restriction of one PIN per agreement should not be interpreted to limit the use of the agreement's PIN to a single designated person. Accordingly, the Final Rule will expressly indicate that, where a filing party has more than one official authorized to file, each additional official must submit a statement to the Commission agreeing that inclusion of the PIN constitutes the signature of that filing official. As an added security measure we are adopting the suggestion of a commenter that such statements be countersigned by the principal official of the filing party.

Commenters also suggested that for security and other reasons there should be a procedure to cancel or change PIN numbers when an agreement official is no longer authorized to make filings. We

[1] 56 FR 1966; January 18, 1991.

[2] Subsequent to the proposed rule this division of responsibility was eliminated so that all such filings now are to be lodged with the newly designated Bureau of Trade Monitoring and Analysis. These changes are reflected in this final rule.

[3] Commenters are the North Europe-USA Rate Agreement and USA-North Europe Rate Agreement; the Asia North American Eastbound Rate Agreement and South Europe USA Freight Conference; the Trans-Pacific Freight Conference of Japan and the Japan Atlantic and Gulf Freight Conference; and the Transpacific westbound Rate Agreement.

concur and have adopted the further suggestion that a PIN and designation of authorized filing officials can be cancelled or changed upon request of the principal official of the filing party.

One other concern about security was expressed, *viz.*, guarding against improper access to filed data by outsiders. Use of modem will be limited to the function of electronic filing and will not result in ability to remotely access or retrieve filed information. The FMC's database will not be internally networked so that control over access to such data will be no different than under the current paper system.

One commenter suggested that industry input should be permitted in developing the technical aspects of electronic filing which, as the Commission stated in the proposed rule, are to be published in a users manual. In this regard, a procedure for electronic confirmation of receipt of filings is requested. The electronic filing system contemplated by this rule is uncomplicated and straightforward. The user manual already has been prepared and is available at the Commission's Office of Information Resources Management ("OIRM"). It will include a provision for electronic confirmation of receipt of filings. Suggestions regarding the manual, including specific proposals for improvement, can be made by users at any time by contacting OIRM.

Finally, we have adopted a suggestion to clarify that filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

Although the Commission as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this final rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Final Rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) as implemented by regulations prescribed within 5 CFR part 1320. Accordingly, OMB approval of the proposed rule is not required.

List of Subjects

46 CFR Part 560

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, the Federal Maritime Commission amends parts 560 and 572 of title 46 of the Code of Federal Regulations as follows:

PART 560—[AMENDED]

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.701 is amended by adding a new paragraph (c) reading as follows:

§ 560.701 General requirements.

* * * * *

(c) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring and Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by an official of the filing party by submitting a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

PART 572—[AMENDED]

3. The authority citation for part 572 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

4. In § 572.701, paragraph (a) is revised to read as follows:

§ 572.701 General requirements.

(a) (1) *Address.* Reports required by this subpart should be addressed to the Commission as follows: Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, Washington, DC 20573–0001.

The lower, left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: "Minutes, Agreement 5000."

(2) *Electronic filing.* Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring and Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

* * * * *

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-21864 Filed 9-11-91; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1121 and 1152

[Ex Parte No. 400 (Sub-No. 3); Ex Parte No. 274 (Sub-No. 21A)]

Rail Exemption Procedures; New Requirement That Maps Be Submitted in All Rail Abandonment Exemption Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is reissuing its procedures for rail exemption petitions filed under 49 U.S.C. 10505 as a new part 1121 of title 49 of the Code of Federal Regulations (CFR) as set forth below. The procedures were published originally at 45 FR 85182 on December 24, 1980, and clarified at 46 FR 7505 on January 23, 1981. The procedures for handling exemption petitions have not been changed substantively. Requirements for intermodal transactions and environmental reports have been added, and the methods for public comment through petitions to reopen or to revoke are clarified. The recently adopted map requirement in 49 CFR 1152.60(a) is being amended to reflect the reissued exemption procedures.

EFFECTIVE DATE: This regulation is effective September 30, 1991, except for § 1152.60(a) which will be effective November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The Commission's procedures for handling rail exemption petitions under 49 U.S.C. 10505 were issued in Ex Parte No. 400, Modification of Procedure for Handling Exemptions filed under 49 U.S.C. 10505 (not printed), served December 29, 1980 and January 21, 1981. We are reissuing the rail exemption procedures without material change and codifying them as a new part 1121 of title 49 of the CFR.

These procedures applied originally only to rail certification and finance matters. Subsequently, the Commission has granted exemptions from other regulatory provisions as well. For example, we have exempted the transportation of various commodities from Commission regulation. See 49 CFR part 1039—Exemptions. We have also issued exemptions relieving certain individual rail operators from our regulation.[1] The broadened application of the exemption provisions is reflected in § 1121.1 of the newly codified procedures. The criteria of section 10505 for issuing exemptions are included in section 1121.2.[2]

Section 1121.3(a) recognizes that some exemption petitions involve transactions (*e.g.* abandonments) that are also subject to the Commission's environmental and historic reporting requirements in 49 CFR part 1105. When seeking exemptions for transactions listed in part 1105 as requiring environmental or historic reports, petitioners must certify that they have complied with the reporting and notice requirements.[3] Environmental and historic preservation conditions may be imposed where appropriate.

In § 1121.3(b) we are adding a provision applicable to exemptions of rail-motor acquisitions. It requires petitioners to provide sufficient information, of specified types, to enable the Commission to perform an intermodal analysis under 49 U.S.C. 11344(c),[4] and thereby make the findings required by that section.

Section 1121.4 contains the procedures for handling rail exemption petitions.[5] Rail exemption proceedings are informal. In determining whether the 49 U.S.C. 10505 criteria are met, the Commission considers proposals contained in exemption petitions on their merits without seeking public comment. If any public comments are filed, however, section 1121.4(b) provides that the Commission may consider them in its deliberations. The Commission will consider comments that are filed in sufficient time to permit review within the deadlines established by these procedures.

In addressing whether regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101a (*see* n. 2, *supra*), the Commission is required to consider only those policy elements relevant to making a determination under the provisions of the statute from which exemption is sought (*e.g.* factors relating to anticompetitive effects in connection with exemptions from 49 U.S.C. 11344(d)). See *Village of Palestine* v. *ICC*, No. 90-1418 (D.C. Cir. June 28, 1991). It should be noted, however, that the Commission may be required by other laws, such as various Federal energy and environmental laws, to take other factors into consideration as well.

If the proposed exemption's impact is not readily apparent from the contents of the petition or accompanying submissions, the Commission may request the petitioner to submit further information. Also, some exemption proposals result in formal rulemaking proceeding in which a notice requesting public comments is published in the **Federal Register.**

Otherwise, the Commission will determine on the basis of the initial filing whether the criteria of section 10505 are met. If we find that they are met, we will issue the exemption and publish a notice of the exemption in the **Federal Register.** That notice will advise interested persons of the opportunity to submit petitions to stay or reopen, and the due dates for such filings.

Exemption requests that are contingent upon, and directly related to, primary applications will be processed under the schedule announced for those primary applications. For example, requests would be those related to rail construction applications, or rail mergers and acquisitions. *See* 49 CFR 1150.10(d), 1180.4(c)(vi).

Section 1121.4(f) indicates that, under section 10505(g), the Commission may not exempt a carrier from mandatory labor protection. Thus, for example, requests for exemption from the requirements of 49 U.S.C. 10903, *et seq.*, or 49 U.S.C. 11343, *et seq.* where labor

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[1] *E.g.*, Finance Docket No. 31367, Logansport & E.R. S-L Co., Inc.—Exempt. from 49 U.S.C. subtitle IV (not printed), served May 16, 1989.

[2] Under section 10505, we must exempt a transaction or service if we find that: (1) Continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

[3] See Implementation of Environmental Laws, 7 I.C.C.2d 807 (1991); 49 CFR 1105.

[4] Under 49 U.S.C. 10505(d), the Commission may not use its exemption power to authorize intermodal ownership otherwise prohibited by the Interstate Commerce Act. The provisions of section 11344(c) are pertinent to acquisitions of motor carriers by rail carriers or persons controlling rail carriers. See e.g., Finance Docket No. 31461, Federal Ind. Ltd.—Contr. Exempt.—Tri-Line Expwys. Ltd. (not printed), served August 29, 1989. Section 11344(c) does not prohibit intermodal ownership. Rather, it provides that the Commission may approve a rail-motor acquisitions, if it finds that the transaction: (1) Is consistent with the public interest; (2) will enable the rail carrier to use motor carrier transportation to public advantage in its operations; and (3) will not unreasonably restrain competition.

[5] Petitions for individual exemptions are distinct from Notices of Exemption filed pursuant to an existing exemption for a class of transactions. Nonetheless, some class exemptions require the filing of an individual notice. An example is found at 49 CFR 1180.2(d), dealing with certain types of transactions under 49 U.S.C. 11343.

protection is mandatory, will be subjected to appropriate labor protection conditions.

In transactions where labor protection is discretionary, requests for imposition of labor protective conditions can be made through petitions to reopen. These include exemptions involving a noncarrier's acquisition of a rail line under 49 U.S.C. 10901, or a rail carrier's acquisition of a motor carrier under 49 U.S.C. 11343, *et seq.*

Petitions to reopen exemption proceedings will be handled under the Commission's appellate procedures at 49 CFR 1152.25(e)(6) (for abandonment or discontinuance exemptions) or 1115.3(b) (for other exemptions). These procedures require a petitioner to show that the prior action will be affected materially because of new evidence or changed circumstances, or that the prior action involves material error.[6]

Public comments on an exemption proposal submitted within 20 days from service of the exemption decision will be considered as a petition to reopen, unless an earlier time limit is prescribed.[7] Comments may include evidence that will be considered as support for reopening.

Petitions to reopen may address whether the exemption proposal meets the exemption criteria in section 10505(d). Petitions to reopen may also include requests for imposition of labor protective, environmental or other conditions.

After an exemption becomes effective, the Commission may consider a petition to revoke under 49 U.S.C. 10505(d). Section 1121.4(i) provides that a person seeking to revoke an exemption has the burden of showing that the revocation criterion of section 10505(d) is met. Under section 1121.4(j), petitions to revoke abandonment exemptions in part to impose public use conditions or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time before the consummation of the abandonment. After the abandonment is consummated, the Commission loses jurisdiction to subject the line to public use conditions or interim trails use.[8]

[6] We note that under § 1152.25(c)(6), petitions to reopen do not lie for unopposed abandonment or discontinuance proposals. This applies to unopposed abandonment and discontinuance application proceedings in which the Commission is required by statute to issue a certificate permitting abandonment or discontinuance under 49 U.S.C. 10904(b). Petitions to reopen are available for an otherwise unopposed abandonment or discontinuance exemption.

[7] A comment received after this time may be construed as a petition to revoke the exemption.

[8] See Docket No. AB-239X, S.R. Investors, Ltd., DBA Sierra R. Co.—Aband.—In Toulumne Cty, CA. (not printed), served July 20, 1987 and January 26, 1988; petition for review dismissed in *Friends of Sierra Railroad* v. *ICC*, 881 F.2d 663 (9th Cir. 1989), *cert. denied*, 110 S. Ct. 1166 (1990).

Recently, the Commission adopted 49 CFR 1152.60 requiring maps to be submitted with abandonment exemptions; [9] that provision will become effective November 13, 1991. We are amending the second sentence of 49 CFR 1150.60(a) to reflect the codified exemption procedures in 49 CFR part 1121.

Reissuing the Rail Exemption Procedures as 49 CFR part 1121 and amending 49 CFR 1152.60(a) do not require public notice and opportunity for comment before implementation. Under 5 U.S.C. 553(b)(A), rules of agency procedure or practice are specifically exempted from the notice and comment procedures. These procedures reflect the Commission's existing processing methods for rail exemptions. The rights of petitioners seeking rail exemptions are not adversely affected.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

List of Subjects

49 CFR Part 1121

Administrative practice and procedures, Railroads.

49 CFR Part 1152

Administrative practice and procedures, Railroads.

Authority: 49 U.S.C. 10505 and 5 U.S.C. 553.

Decided: August 30, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

1. Part 1121 is added to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

Sec.

Authority: 49 U.S.C. 10505; 5 U.S.C. 553.

[9] Maps Submitted—Aban. Exempt. Proceedings, 7 I.C.C. 2d 255 (1991) published at 56 FR 32336 on July 16, 1991.

§ 1121.1 Scope.

These procedures govern petitions filed under 49 U.S.C. 10505 to exempt a transaction or service from 49 U.S.C. subtitle IV, or any provision of 49 U.S.C. subtitle IV.

§ 1121.2 Criteria.

Under 49 U.S.C. 10505, the Commission must exempt a person, class of persons or a transaction or service from regulation when it finds that:

(a) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and

(b) Either:

(1) The transaction is of limited scope; or

(2) Regulation is not necessary to protect shipppers from the abuse of market power.

§ 1121.3 Petitions for exemption.

(a) A petition must comply with environmental or historic reporting and notice requirements of 49 CFR Part 1105, if applicable.

(b) If the exemption proposal involves the acquisition of a motor carrier by a rail carrier (or person who controls or is affiliated with a rail carrier) under 49 U.S.C. 11344(c), the petition must include sufficient information to show that the transaction:

(1) Is consistent with the public interest;

(2) Will enable the rail carrier to use motor carrier transportation to public advantage in its operations; and

(3) Will not unreasonably restrain competition.

§ 1121.4 Procedures.

(a) Proposals contained in a petition for exemption under 49 U.S.C. 10505 are considered on their own merit.

(b) Exemption proceedings are informal, and public comments are not sought during consideration of exemption petition proposals. However, the Commission may consider during its deliberation any public comments filed in response to a petition for exemption.

(c) If the Commission determines that the criteria in 49 U.S.C. 10505 are met for the proposed exemption, it will issue the exemption and publish a notice of the exemption in the **Federal Register.**

(d) If the impact of the proposed exemption cannot readily be ascertained from the information contained in the petition or accompanying submissions or if significant adverse impacts might occur if the proposed exemption were granted, the Commission, in its discretion, may:

(1) Direct that additional information be filed; or

(2) Publish a notice in the **Federal Register** requesting public comments.

(e) Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.

(f) Under 49 U.S.C. 10505(g), the Commission may not relieve a carrier from the statutory obligation to protect the interests of employees. Accordingly, the Commission will impose appropriate employee protective conditions in decisions involving transactions subject to mandatory labor protection. Where labor protection is not mandatory, the Commission will exercise its discretion and impose labor protection when protection is found to be warranted under the circumstances.

(g) An exemption generally will be effective 30 days from the date of service. Petitions to stay must be filed within 10 days from the date of service. Petitions to reopen under 49 CFR 1115.3(b) or 1152.25(e) must be filed within 20 days of the service date of the decision granting the exemption. A petition to reopen may include comments on the exemption proposal, or requests for imposition of employee protection or other conditions in the exemption.

(h) For good cause shown, an exemption may become effective at a time earlier than 30 days from the date of service. In such cases, the decision will specify the time for filing petitions to stay or reopen the exemption.

(i) Under 49 U.S.C. 10505(d) or 49 CFR 1152.25(e), the Commission may revoke an exemption in whole or in part. Petitions to revoke may be filed any time after the exemption becomes effective. The person seeking revocation has the burden of showing that the revocation criterion of section 10505(d) is met.

(j) In abandonment exemptions, petitions to revoke in part to impose public use conditions under 49 CFR 1152.28, or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time prior to consummation of the abandonment.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

2. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161 and 11163.

3. The second sentence of § 1152.60(a) is revised to read as follows:

§ 1152.60 Special Rules.

(a) * * * General rules applicable to any proceeding filed under 49 U.S.C. 10505 exemption procedure may be found in 49 CFR part 1121.

* * * * *

[FR Doc. 91–21978 Filed 9–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 910899–1199]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Emergency interim rule; correction.

SUMMARY: NOAA is correcting a rule document that implements an emergency interim final rule to constrain Pacific halibut bycatch rates in the Bering Sea and Aleutian Islands area (BSAI). The emergency rule appeared in the **Federal Register** on August 13, 1991 (56 FR 38346).

EFFECTIVE DATES: Effective August 7, 1991 through November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, Fisheries Management Division, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: NMFS has promulgated an emergency interim rule to implement measures to constrain Pacific halibut bycatch in the BSAI trawl fisheries and facilitate enforcement of those measures. The emergency rule was published in the **Federal Register** on August 13, 1991 (56 FR 38346). Two inadvertent errors have been identified in that document; they are discussed briefly below and are corrected by this notice.

First, the emergency rule added the directed fishing standard for Pacific cod under new paragraph § 675.20(h)(7). Reference to this new paragraph was erroneously omitted under § 675.20(h)(6), which established a default directed fishing standard for groundfish. This correction notice suspends § 675.20(h)(6) and replaces it with a new § 675.20(h)(8) that establishes a default directed fishing standard for groundfish that incorporates revised rulemaking implemented under the emergency rule.

Second, the emergency rule added a definition of "trip" for purposes of the directed fishing standards under § 675.20(i)(3). However, the original definition of "trip" at § 675.20(i)(2) was not suspended with the result that two different definitions of "fishing trip" exist in the regulations. To resolve this conflict, the original definition of "trip" set forth under § 675.20(i)(2) is suspended during the period the emergency rule is in effect as was intended in the emergency rule.

Dated: September 4, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

The following corrections are made to FR Doc. 91–18953 published in the **Federal Register** on August 13, 1991 (56 FR 38346).

§ 675.5 [Section heading corrected]

1. On page 38350, in the second column, in part 675, in the section heading following amendatory instruction 4, "§ 672.5" is corrected to read "§ 675.5".

§ 675.20 [Corrected]

2. On page 38350, in the second column, amendatory instruction 5 is corrected to read as follows:

5. Section 675.20, paragraphs (h)(1), (h)(2), (h)(6), and (i)(2) are suspended from August 7, 1991, until November 12, 1991, and new paragraphs (h)(7), (h)(8), and (i)(3) are added from August 7, 1991, until November 12, 1991, to read as follows:

3. On page 38350, in the third column, in § 675.20(h), following paragraph (h)(7), add the following paragraph (h)(8):

(h) * * *.

(8) *Other.* Except as provided under paragraphs (h)(3) through (5) and (h)(7) of this section, the operator of a vessel is engaged in the directed fishing for a specific species or species group if he retains at any particular time during a trip that species or species group in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

* * * * *

[FR Doc. 91–21920 Filed 9–9–91; 10:34 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 177
Thursday, September 12, 1991

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 THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 5

[Notice No. 727; Ref: Notice No. 710; 91F006P and 90F275P]

RIN 1512-AA88 and AA87

Definitions of "Brand Label" for Wine, and; Standard Wine Containers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing, in part, to amend the definition of "brand label" in 27 CFR 4.10. The proposed definition would provide that the "brand label" on a wine container is the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

ATF believes that the definition of "brand label" for wine containers should be amended to attain consistency with the principal display panel approach of the Fair Packaging and Labeling Act. The Bureau also believes that the amended definition will ensure that mandatory information on wide labels is more conspicuous to consumers.

In addition to amending the "brand label" definition for wine, ATF is amending its earlier proposal regarding standard wine containers, as set forth in Notice No. 710.

DATES: Written comments must be received by December 11, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; Attn: Notice No. 727.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Bureau to issue regulations with respect to the packaging, marking, branding, labeling, and size and fill of container as will prohibit deception of the consumer with respect to such products or the quantity thereof. In addition, section 105(e) provides the Bureau with authority to promulgate regulations which will provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to the labeling and advertising of wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. Section 4.32(a) requires that certain mandatory information, including the brand name, the class, type or other designation, and the alcohol content, appear on the brand label. The current definition of "brand label" in § 4.10 provides that a "brand label" is "[t]he label carrying, in the usual distinctive design, the brand name of the wine."

The current definition of "brand label" is identical to the one first promulgated in the original wine labeling regulations in 1935. By way of comparison, the original distilled spirits labeling regulations included a similar definition. However, in 1969, the "brand label" definition in the distilled spirits regulations was amended to refer to the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. (T.D. 7020, 34 FR 20335; December 30, 1969). According to the Director's opening statement at one of the public hearings on the proposed redefinition, the purpose of the amended language was to make the term "brand label" consistent with the principal display panel approach of the Fair Packaging and Labeling Act (15 U.S.C. 1451, *et seq.*, and 16 CFR 500.2(h)).

ATF believes that the definition of "brand label" for wine containers should also be amended to attain consistency with the principal display panel approach of the Fair Packaging and Labeling Act. The Bureau believes that this approach will ensure that mandatory information on wine labels is more conspicuous to consumers. The proposed amendment provides that the mandatory information required to be shown on the brand label must appear on the 40 percent of the circumference of a cylindrical surface which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. Thus, such information cannot appear on the extreme side of a "wrap-around" neck label, where it would be difficult for the consumer to read.

In addition, the proposed definition of "brand label" would address a concern that the Bureau has had regarding the use of "front" and "back" labels on wine containers. Over the years, applicants for certificates of label approval have often submitted for approval both a front and back label. The label which is designated on the application (ATF F 1500.31) as the "front label" contained all the mandatory information required to be shown on the brand label, as well as items such as the Government warning, and the product identification code. The label designated as the "back label" consisted of some art work, photo, or print, along with the brand name of the product. In spite of the designations of the labels, it is clear that in many of these cases, the label designated as the "back label" was most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

The proposed amendment to the definition of "brand label" will give ATF the authority to determine, on a case-by-case basis, whether a label which has been designated by the applicant as a "back label" is in fact most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. If so, then regardless of the way the labels are designated on the application for label approval, ATF will consider such

label to be the principal display panel. Such a label must contain all of the mandatory information which is required to appear on the brand label. ATF believes that the proposed amendment will thus ensure that the mandatory information which is required to appear on the brand label will appear on the surface of the wine container which is most likely to be displayed to, presented to, shown to, or examined by consumers under normal and customary conditions of display for retail sale.

Thus, ATF is proposing to amend the definition of "brand label" in § 4.10, to provide that the "brand label" is the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

The proposed definition of "brand label" would be more consistent with the principal display panel approach of the Fair Packaging and Labeling Act, and is closely modeled after the definition of brand label for distilled spirits products currently found in § 5.11. ATF believes that the proposed definition of "brand label" will make mandatory information on wine containers more conspicuous to the consumer.

Notice No. 710 (Standard Wine Containers)

Recently, the Bureau has received numerous complaints from consumers about a wine specialty product, having an alcohol content of 20 percent by volume, which is packaged in such a way that it resembles a "wine cooler." ("Wine cooler" products traditionally have an alcohol content of less than seven percent by volume.) For example, the wine specialty product about which ATF has received complaints is packaged in a bottle of a size and shape used by traditional "wine cooler" products. The bottle has a wrap-around neck label, and no label at all on the base of the bottle. The complaints have indicated that consumers are accustomed to associating this type of bottle, especially when labeled with a warp-around neck label, with "wine cooler" products with an alcoholic content of less than seven percent.

ATF believes that in certain circumstances, the size and shape of a wine container, when considered in conjunction with the placement of the label and the packaging of the product, may be likely to mislead the purchaser as to the identity of the product. Consequently, on February 6, 1991, ATF published a notice in the **Federal Register** (Notice No. 701; 25 FR 4770) proposing to amend the regulations in part 4 to provide that standard wine containers shall be so made and formed so as not to mislead the purchaser. As proposed, wine containers shall be held (irrespective of the information contained on the label) to be so made and formed as to mislead the purchaser if the Director determines, based on industry practice or consumer understanding, that the size and shape of the container, when considered in conjunction with the placement of the label and the packaging of the product, are likely to mislead the purchaser as to the identity of the product.

Analysis of Comments

In response to Notice No. 710, the Bureau received 37 comments. Most of the comments received favored ATF's consideration of a product's container size and shape, in conjunction with its labeling and packaging. Many of these commenters, however, stated that the proposed regulation did not go far enough. For example, they believed that the packaging of distilled spirits and beer should also be covered in the regulations.

Many commenters, however, objected to the Bureau's proposed regulation. In particular, the commenters (representing both domestic and foreign industry) expressed concern that the proposal would have a negative impact on the industry by placing at risk investments made by suppliers, wholesalers, and retailers. As one commenter stated,

> * * * an industry member might invest substantial sums on the creation of a new container in good faith and bring that container to the market only to subsequently discover that BATF consider it to be violative * * * Furthermore, under the proposed rule, a wine container which was considered perfectly acceptable at the time it was introduced to the marketplace might at a subsequent point in time be determined by BATF to be 'misleading' * * *

In any event, under the proposed regulation a wine container found by the Director to be misleading may no longer be used. That being the case, some commenters believed that the Bureau's proposal would have a detrimental effect on innovation in the marketplace by preventing the marketing of many new products.

Amended Proposal

In light of the comments received, ATF is amending its earlier proposal as set forth in Notice No. 710. The amended proposal will apply to wine and distilled spirits packaged in standard containers. A "standard container" is one for which a standard of fill is prescribed in the regulations. However, standards of fill have not been prescribed for malt beverages. According to the record, unlike wine and distilled spirits, malt beverage containers have been fairly well standardized and, consequently, there appeared to be little likelihood of consumer confusion or deception in this area. As such, there are no "standard" malt beverage containers and the amended proposal will not apply to the packaging of malt beverages.

In addition, unlike wine and distilled spirits, there is a much narrower range of alcohol content in most malt beverages, usually between three and five percent alcohol by volume. Therefore, the possibility of any consumer confusion or deception regarding the alcoholic content of malt beverages is minimized.

Consequently, the Bureau is now proposing to amend the regulations to provide that standard wine and distilled spirits containers shall be so made and formed as not to mislead the purchaser. Wine and distilled spirits containers shall be held (irrespective of the information contained on the label) to be likely to mislead the purchaser if the Director determines that the size, shape, or composition of the container (e.g., glass, metal, plastic, etc.), when considered in conjunction with the placement of the label, are likely to mislead the purchaser as to the identity or alcoholic content of the product. If the Director determines that a container is likely to mislead the purchaser, then wine or distilled spirits may not be bottled in such container unless the product is labeled with an additional statement which the Director finds to be sufficient to dispel any misleading impression as to the product's identity or alcohol content. The Director may require such statement to be placed on a principal display panel other than a neck label or a shoulder wrap.

ATF believes that the amended proposal will ensure that consumers are not misled as to the identity or alcoholic content of the product they wish to purchase. At the same time, the revised proposal will not place an undue burden on the industry. A container found to be in violation of the regulation will not have to be removed from the marketplace and redesigned. Rather,

wine or distilled spirits may not be bottled in such container unless the product is labeled with an additional statement which the Director finds to be sufficient to dispel any misleading impression as to the product's identity or alcoholic content.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning the amendment proposed by this notice. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing is necessary.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Disclosure

Copies of the proposed amendment and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

List of Subjects

27 CFR Part 4

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

27 CFR Part 5

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

Authority and Issuance

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.10 is amended by revising the definition of "brand label" to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

* * * * *

Par. 3. Section 4.71 is amended by revising paragraph (a)(1) to read as follows:

§ 4.71 Standard wine containers.

(a) * * *

(1) *Design.* It shall be made and formed so as not to mislead the purchaser.

(i)(A) Wine containers shall be held (irrespective of the information contained on the label) to be likely to mislead the purchaser if the Director determines that the size, shape, or composition of the container, when considered in conjunction with the placement of the label, are likely to mislead the purchaser as to the identity or alcoholic content of the product.

(B) If the Director determines that a wine container is likely to mislead the purchaser, as provided in paragraph (a)(1)(i)(A) of this section, wine may not be bottled in such container unless it is labeled with an additional statement which the Director finds to be sufficient to dispel any misleading impression as to the product's identity or alcoholic content. The Director may require such statement to be placed on a principal display panel other than a neck label or a shoulder wrap.

(ii) Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

* * * * *

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 5. Section 5.46 is amended by revising paragraph (c) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(c) *Design.* It shall be made and formed so as not to mislead the purchaser.

(1)(i) A liquor bottle shall be held (irrespective of the information contained on the label) to be likely to mislead the purchaser if the Director determines that the size, shape, or

composition of the container, when considered in conjunction with the placement of the label, are likely to mislead the purchaser as to the identity or alcoholic content of the product.

(ii) If the Director determines that a liquor bottle is likely to mislead the purchaser, as provided in paragraph (c)(1)(i) of this section, distilled spirits may not be bottled in such container unless it is labeled with an additional statement which the Director finds to be sufficient to dispel any misleading impression as to the product's identity or alcoholic content. The Director may require such statement to be placed on a principal display panel other than a neck label or a shoulder wrap.

(2) A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be likely to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

* * * * *

Approved: July 2, 1991.

Signed:

Daniel R. Black,

Acting Director.

Dated: August 8, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-21950 Filed 9-11-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218 and 230

RIN 1010-AB58

Offsetting Incorrectly Reported Production Between Different Federal or Indian Leases (Cross-Lease Netting)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking, extension of public comment period.

SUMMARY: The Minerals Management Services (MMS) hereby gives notice that it is extending the public comment period on its Notice of Proposed Rule, which was published in the Federal Register on July 12, 1991, (56 FR 31891). In response to requests for additional time, MMS will extend the comment period from September 10, 1991, to September 30, 1991.

DATES: Comments must be received on or before September 30, 1991.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado, 80225, Attention: Dennis Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432 or (FTS) 326-3432.

Dated: September 5, 1991.

Jimmy W. Mayberry,

Acting Associate Director for Royalty Management.

[FR Doc. 91-21932 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 740, 761 and 772

Federal Lands Program; Areas Unsuitable for Mining; Areas Designated by Act of Congress; Requirements for Coal Exploration

AGENCY: Office of Surfacing Mining Reclamation and Enforcement, Interior.

ACTION: Propose rule; extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) extends until October 16, 1991, the public comment period on the proposed rule published in the July 18, 1991, Federal Register. The proposed rule would amend those portions of its permanent program regulations that address the circumstances which constitute valid existing rights to mine coal in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Act.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. local time on October 16, 1991.

ADDRESSES: Written comments may be hand-delivered to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1100 L Street, NW., Washington, DC; or mailed to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208-2564.

SUPPLEMENTARY INFORMATION: OSM published a proposed rule on July 18, 1991, that would amend those portions of its permanent program regulations that address the circumstances that constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (56 FR 33152). OSM proposed that VER would exist when an applicant for a permit to conduct surface coal mining operations has obtained, or has made a good faith effort to obtain, all necessary permits, or the application of the section 522(e) prohibitions would effect a compensable taking of the property covered by the application. The proposed rule would reorganize the existing regulations for clarity and would change OSM's procedures for making VER determinations. OSM proposed to change the Federal lands program to indicate that OSM will make VER determinations affecting Federal lands within the boundaries of section 522(e) (1) and (2) areas using the Federal regulatory definition of VER. OSM also proposed to require VER for coal exploration activities where the coal will be commercially used or sold.

The comment period for the proposed rule was scheduled to close on September 16, 1991. In response to a request for more time to submit public comments on this proposal, OSM is extending the comment period by 30 days. Comments will now be accepted until 5 p.m. local time on October 16, 1991.

Dated: September 9, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 91-21992 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 260, 264, 265, 270 and 271

Hazardous Waste Treatment, Storage, and Disposal Facilities; Proposed Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On July 22, 1991, EPA proposed under the authority of the Resource Conservation and Recovery

Act (RCRA), as amended, organic air emission standards for tanks, surface impoundments, and containers at hazardous waste treatment, storage, and disposal facilities (TSDF) (56 FR 33491). In response to a request, the period that EPA will receive written comments from the public regarding this proposed rulemaking is being extended by 30 days.

DATES: The EPA will accept written comments from the public on the proposed rule until October 21, 1991.

ADDRESSES: Written comments regarding the proposed rule may be mailed to the Docket Clerk (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please refer to Docket Number F–91–CESP–FFFFF, Air Emission Standards for Organics Control.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Lacy, Standards Development Branch, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5261.

SUPPLEMENTARY INFORMATION: The EPA received a letter from a trade association requesting a 30-day extension of the public comment period for the proposed RCRA air emission standards for TSDF tanks, surface impoundments, and containers (56 FR 33491). This trade association represents a large group of the TSDF owners and operators that would be affected by the rule. In the preamble to the proposed rule, EPA extensively requested specific data and information from TSDF owners and operators regarding their current waste management practices. In response to EPA's requests for information, the trade association stated that it is presently soliciting information from its members companies. Furthermore, the trade association noted the proposed rule is complex, and EPA has placed an extensive amount of supporting documentation in the docket for the proposed rule. Therefore, the trade association requested an extension of the public comment period by an additional 30 days to provide adequate time for it and its member companies to understand the proposed rule, coordinate the collection of data, analyze the data, and prepare detailed comments with the supporting data.

The EPA believes it would be beneficial to the preparation of the final rule to receive more specific information that will be prepared by the trade association with the additional time. Therefore, EPA is extending the public comment period until October 21, 1991.

Dated: September 6, 1991.

William G. Rosenberg,

Deputy Assistant Administrator for Air and Radiation.

Michael Shapiro,

Deputy Assistant Administrator.

[FR Doc. 91–21975 Filed 9–11–91; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1053

[Ex Parte No. MC–198]

Contracts for Transportation of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking

SUMMARY: The Commission is proposing to repeal its motor contract carrier regulations at 49 CFR 1053. After consideration of the comments received in response to its decision served March 5, 1991, and its Advance Notice of Proposed Rulemaking published in the **Federal Register** on March 6, 1991, at 56 FR 9339, the Commission has concluded preliminarily that the substantive provisions of these regulations are not required by the statute and do not further the goals of the national transportation policy. Any interested person may file a comment in this proceeding.

DATES: Comments are due on or before October 15, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC–198 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph O'Malley, (202) 275–7928 or Richard Felder, (202) 275–7291. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not affect significantly either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission concludes preliminarily that these rules will have a significant economic impact on a substantial number of small entities. Repeal of the contract regulations would provide greater flexibility and speed to small shippers and small motor carriers in developing and executing their contracts, and would reduce recordkeeping and compliance requirements.

List of Subjects in 49 CFR Part 1053

Motor carriers.

Authority 49 U.S.C. 10101, 10102, 10321, 10923, and 11101, and 5 U.S.C. 553.

Decided: August 27, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioners Simmons and McDonald dissented with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–21977 Filed 9–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB06

Endangered and Threatened Wildlife and Plants; Threatened Status for the Goliath Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the goliath frog of Central Africa. This huge amphibian is rare and narrowly distributed, and is threatened by habitat loss, commercial trade, local hunting, and perhaps other factors. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended (Act), for this species. The Service seeks relevant data and comments from the public. If listed, permits would be available to enhance propagation or survival of the species and for scientific purposes that are consistent with the purposes of the Act.

DATES: Comments must be received by November 12, 1991. Public hearing

requests must be received by October 28, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in the office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Express and messenger-delivered mail should be sent to the latter address. FAX messages should be sent to 703–358–2202.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

Recent investigations have suggested an alarming worldwide decline in populations of frogs and other amphibians (Rabb 1990). Because of their generally complex life cycles, with aquatic larval and terrestrial adult stages, and their permeable skin, amphibians constitute a group particularly sensitive to environmental disturbances. The precise causes of the decline are not well understood, but indicated factors in various cases include forest destruction, acid rain, metallic pollution, pesticides, and soil drying. Problems have been observed in such diverse places as Western Canada, South Carolina, Guatemala, Ecuador, Puerto Rico, Borneo, and Australia.

The U.S. Fish and Wildlife Service (Service) now has received information that the largest frog in the world is among those facing these threats. This species, the goliath frog (*Conraua goliath*) of Central Africa, reaches a recorded weight of up to 7.2 pounds (3.3 kilograms), a head and body length of 12.6 inches, (320 millimeters), and a total length, including the hind leg and foot, of about 32 inches (813 millimeters); there have been reports of even larger individuals (Klass 1990; Sabater Pi 1985; Zahl 1967). Surprisingly, this giant amphibian has a relatively small range. It occurs along major rivers in dense rainforest within an area of about 9,000 square miles (23,400 square kilometers) in Equatorial Guinea and southwestern Cameroon. In contrast, the common bullfrog (*Rana catesbiana*), which is about half the size, occurs all across eastern North America from Quebec to Mexico (Frost 1985; Sabater Pi 1985; Zahl 1967).

In a petition dated April 8, 1991, the Service was requested to add the goliath frog to the List of Endangered and Threatened Wildlife. The petition is from Dr. Christina M. Richards (Biology Department, Wayne State University, Detroit, Michigan 48202) and Dr. Victor H. Hutchison (Department of Zoology, University of Oklahoma, Norman, Oklahoma 73069). It was accompanied by extensive data on the biology of the goliath frog, and pointed out such problems as slow maturation, rarity, restricted distribution, habitat destruction, local hunting, international trade, high prices for living specimens, and poor adaptation to captivity.

Section 4(b)(3) of the Endangered Species Act of 1973, as amended in 1982 (Act), requires two findings with respect to a petition to list, delist, or reclassify a species. Within 90 days of receipt, a finding must be made on whether the petition presents substantial information indicating that the requested action may be warranted, and, within 12 months of receipt, a finding must be made as to whether the action is warranted, not warranted, or warranted but precluded by other listing activity.

The Service has examined the data submitted by the petitioners and has consulted other authorities. It also has learned that the goliath frog is classified as vulnerable by the International Union for Conservation of Nature and Natural Resources. This review leads the Service to make the findings, hereby incorporated and published in this proposal, that the petition does present substantial information and that the requested action is warranted. Although currently available data indicate that a threatened classification is appropriate, the Service emphasizes that it will be seeking additional information during the comment period on the proposal, that all new data and opinions will be reviewed, and that such evaluation may lead to a final decision that is different from this proposal.

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 Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the goliath frog (*Conraua goliath*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All available information shows that the goliath frog has a narrowly restricted range and that it is rare therein. Despite its spectacular size it was not formally described until 1906. Subsequent investigators have commented repeatedly on how difficult the species is to locate, approach, and capture (Gewalt 1977; Perret 1957; Perret and Mertens 1957). Data compiled by the petitioners show that only 91 specimens were reported collected through 1967. The rate of collection later increased in response to growing scientific and commercial interest. Letters solicited by the petitioners from authorities in Cameroon pointed out that logging, deforestation, and dams are affecting the limited habitat of the goliath frog.

Sabater-Pi (1985) reported that the goliath frog has an "extremely restricted and selective distribution * * * occurs in rapids and cascades of rivers with a sandy bottom and very clean, slightly tannic oxygen-rich waters * * *. The vegetation surrounding these rivers corresponds to West African (congolid) rainforest. It has been altered mainly by human activities, such as deforestation for agricultural purposes, forest exploitation and establishment of new villages. All these factors drastically have altered the ecosystem inhabited by the species."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The goliath frog is avidly hunted by the native peoples within its range, who consider its meat a delicacy. Information presented by Zahl (1967) suggests that this species is so rare and difficult to approach, its capture is a cause for celebration. Sabater-Pi (1985) warned that it was threatened by native hunting and that effective protective measures were needed at the national level.

A new problem, and one causing much of the immediate concern for the species, is capture and export of live animals. Because of its size, the goliath frog is becoming increasingly popular for public and private exhibition. Advertisements submitted by the petitioners show that the asking price is $599.00 for "small" specimens and $2,500.00 for individuals weighing 6–9 pounds. One U.S. dealer is reported to have imported 50 individuals and to have attempted to enter some in the well-known Frog Jump Jubilee in Calaveras County, California.

In a letter to the petitioners, Bob Johnson, Curator of Amphibians and Reptiles at the Toronto Metropolitan Zoo, expressed concern that current levels of commercial exploitation might

be excessive in relation to sustainability of wild populations of *Conraua goliath*. He noted also that survival rates in previous importations have not been high, primarily because of shipping stress and the time required to acclimate the species to captive conditions.

C. *Disease or predation.* While not now known to be general problems, disease and natural predation are to be expected and may become of serious conservation concern for populations that already have been severely reduced or fragmented through human disturbance.

D. *The inadequacy of existing regulatory mechanisms.* The goliath frog is not covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora. There are no substantive measures restricting exploitation, trade, or habitat destruction.

E. *Other natural or manmade factors affecting its continued existence.* Although *Conraua goliath* is by far the world's largest frog, its eggs, tadpoles, and young are hardly larger than those of other frogs (Sabater-Pi 1985; Zahl 1967). The petitioners therefore state that *C. goliath* undoubtedly takes a longer time than do most frogs to become sexually mature, and a mature animal removed from a population will not be replaced quickly. The note also that mortality in captivity is extremely high, and zoos have been unable to keep specimens for long term display.

The decision to propose threatened status for the goliath frog was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. This giant frog is rare and narrowly distributed, and is vulnerable to human exploitation and environmental disruption. Questions about its status remain, however, and the Service will attempt to obtain and evaluate new information during the comment period. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. All such permits must also be consistent with the purposes and policy of the Act as required by Section 10(d) of the Act. 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. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution and population status of this species;

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

The final decision on the proposed listing of the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a decision that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed by 45 days from the date of publication of the proposal, should be in writing, and should be directed to the party named in the above "**ADDRESSES**" section.

National Environmental Policy Act

The 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, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

Literature Cited

Frost, D.R., ed. 1985. Amphibian species of the world. A taxonomic and geographical reference. Allen Press and Association of Systematic Collections, Lawrence, Kansas, v + 732 pp.

Gewalt, W. 1977. Einige Bemerkungen über Fang, Transport und Haltung des Goliathfrosches (*Conraua goliath* Boulenger). Zool. Garten 47:161–192.

Klass, T. 1990. Monster frogs have leg up on other jumpers. Ann Arbor News, January 9.

Perret, J.-L. 1957. Observations sur *Rana Goliath* Blgr. Bull. Soc. Neuchateloise Sci. Nat. 80:195–202.
Perret, J.-L. and R. Mertens. 1957. Etude d'une collection herpetologique faite au Cameroun de 1952 a 1955. Bull. de I.F.A.N. 19:548–601.
Rabb, G.B. 1990. Declining amphibian populations. Species, no. 13–14, pp 33–34.
Sabater-Pi, J. 1985. Contribution to the biology of the giant frog (*Conraua goliath*, Boulenger). Amphibia-Reptilia 6:143–153.
Zahl, P.A. 1967. In quest of the world's largest frog. Natl. Geogr. 134:446–452.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Proposed Regulation Promulgation

PART 17—[AMENDED]

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:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; 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 AMPHIBIANS, 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						
Amphibians							
*	*	*	*	*	*		
Frog, goliath	*Conraua goliath*	Cameroon, Equatorial Guinea.	Entire	T		NA	NA.
*	*	*	*	*	*		

Dated: August 16, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91–21846 Filed 9–11–91; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB14

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To Reclassify the Gila Trout (Oncorhynchus Gilae) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) is withdrawing the proposed rule to reclassify the Gila trout (*Oncorhynchus Gilae*) (Smith and Stearley 1989) from endangered to threatened. Recent data indicate that the Gila trout no longer meets the criteria for reclassification as given in the Gila Trout Recovery Plan (USFWS 1984). Forest fires, drought, floods, and invasion by brown trout have severely reduced three Gila trout populations and eliminated one population.

DATES: This withdrawal is effective October 15, 1991.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, 3530 Pan American Hwy. NE., suite D, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Jerry Burton, Endangered Species Biologist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/883–7877 or FTS 474–7877).

SUPPLEMENTARY INFORMATION:

Background

Gila trout (*Oncorhychus Gilae*) is native to relatively undisturbed, high altitude mountain streams in Arizona and New Mexico. Historically, Gila trout occurred in the Verde and Agua Fria drainages, Arizona, and in the upper Gila drainage in New Mexico.

When the Gila trout was listed as endangered (March 11, 1967; 32 FR 4001), its range had been reduced to five small headwater creeks. These five creeks were the Iron, McKena, and Spruce in the Gila Wilderness, and Main Diamond and South Diamond creeks in the Aldo Leopold Wilderness. The principle reason for the drastic decline of the species included hybridization, competition with and predation by non-native rainbow trout (*Oncorhynchus Mykiss*) and cutthroat trout (*Oncorhynchus Clarki*). Plus competition with and predation by brown trout (*Salmo Trutta*).

Recovery actions initiated after listing included replicating each natural population by chemically treating streams within the historic range of the species to remove nonnative competitive and predatory fish species, constructing barriers to prevent reinvasion by these species, and restocking the streams with Gila trout. Seven additional populations were thus established, and the five natural populations were replicated. When the proposed rule was published (October 6, 1987; 52 FR 37424), twelve secure populations existed, including five indigenous and seven reintroduced populations. All five indigenous populations were secure and occupied their habitat to its maximum carrying capacity. Reintroduced populations were successfully reproducing and were expected to fill their habitat to carrying capacity in the near future (Turner 1986). Stream renovation and transplantation efforts were accomplished jointly by the Service, U.S. Forest Service, New Mexico Department of Game and Fish, and New Mexico State University.

By replicating the five wild populations to establish seven additional populations, the Service had fulfilled criteria for reclassifying the Gila trout as threatened as outlined by the Gila Trout Recovery Plan (USFWS 1984). The Plan states that "the species could be considered for downlisting

from its present endangered status to a threatened status when survival of the five original ancestral populations is secured and when all morphotypes are successfully replicated or their status is otherwise appreciably improved." The Service determined that recovery efforts had improved the status of the Gila trout such that the species was no longer "in danger of extinction throughout all or a significant portion of its range" (i.e., endangered), but that hybridization and/or competition with non-native salmonids still threatened this fish below stream barriers. Therefore, the Service believed that reclassification to a threatened status was appropriate.

All interested groups, agencies, and individuals who responded to the proposed rule supported the reclassification. Both New Mexico Department of Game and Fish and Arizona Game and Fish Department originally supported the reclassification but expressed concern that downlisting of the Gila trout might cause the Service to lessen efforts towards recovery of the species. The Service responded that it did not intend to curtail recovery efforts for this species owing to its reclassification. Both the progress towards recovery that had been made, and the recovery tasks that are either underway or planned, reinforce the Service's continuing commitment to the recovery of this species. Experience has shown that the Gila trout is a "recoverable" species.

New Mexico Department of Game and Fish, the Bureau of Reclamation, Albuquerque Wildlife Federation, and Trout Unlimited all commented on the benefits of allowing a limited sport fishery for the species after it is reclassified. They stressed that much more public support for recovery will result from allowing a sport fishery.

Finding and Withdrawal

The comment period on the proposal to reclassify the Gila trout from endangered to threatened originally closed on December 7, 1987. The Service reopened the comment period from June 26, 1989, to July 26, 1989 (54 FR 26811), to obtain additional information on the status of the species. Newspaper notices, inviting general public comment, were published in the Silver City Daily Press on July 8, 1989; the Albuquerque Journal and the El Paso Times on July 9, 1989; and the Deming Headlight on July 17, 1989. Comment letters supporting postponement of downlisting were received from the U.S Forest Service, New Mexico Department of Game and Fish, Arizona Game and Fish Department, Gila Trout Recovery Team, Desert Fishes Council, and several biologists.

The commenters recommended postponement of the downlisting for the following reasons:

1. Droughts and forest fires in the Main Diamond and South Diamond watersheds destroyed the Main Diamond and severely reduced South Diamond Gila trout populations.

2. Severe flooding in 1988 reduced the Gila trout population in McKnight Creek by at least 95 percent.

3. Propagation activities at hatcheries has not proceeded as planned and additional fish are not available to replenish fish stocks depleted by natural disasters.

4. The Gila trout population in Iron Creek is plagued by competition from brown trout and will need to be monitored closely to ensure that Gila trout populations are not depleted.

5. The Little Creek population was severely reduced by a 1988 flood.

The Service has determined that the Gila trout no longer meets the criteria for reclassification as given in the Gila Trout Recovery Plan. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended, the Service withdraws its proposed rule to reclassify the Gila trout from endangered to threatened. When conditions improve, the Service will reevaluate the appropriateness of proposing the reclassification at a later date.

References Cited

Smith, G.R. and R.F. Stearly 1989. The Classification and Scientific Names of Rainbow and Cutthroat Trouts. Fisheries. Vol. 14, No. 1. 7 pp.

Turner, P.R. 1986. Restoration of the Endangered Gila Trout. Paper presented to Annual Meeting of the Western Division, American Fisheries Society, Portland, Oregon. 12 pp.

U.S. Fish and Wildlife Service. 1984. Gila Trout Recovery Plan. Endangered Species Office, Albuquerque, NM. 52 pp.

Author

This notice was prepared by Sonja E. Jahrsdoerfer, U.S. Fish and Wildlife Service, 222 South Houston suite A Tulsa, Oklahoma 74127 (918/581-7458 or FTS 745-7458).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 16, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91-21845 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 910792-1192]

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to increase the minimum mesh size for roller trawl gear in the Exclusive Economic Zone north of 40°30' N. latitude off Washington, Oregon, and California, making the minimum mesh size for all roller and bottom trawls a uniform 4.5 inches (11.43 cm) coastwide. This action is intended to reduce the harvest and discard of small, juvenile groundfish, to increase yield, and to reduce the need for other types of more restrictive management measures.

DATES: Comments on the proposed rule must be received on or before October 9, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731-7415.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Fishery Management Council (Council) makes recommendations to the Secretary of

Commerce for the management of fisheries under the FMP. The predominant management measures recommended by the Council have been harvest guidelines (or quotas) that establish the annual harvest goal, gear restrictions that affect the size and species of fish caught, and trip landing and frequency limits that limit effort in the fishery. The Council has become increasingly concerned that, as groundfish stocks are reduced to the level that will produce the maximum sustainable yield (MSY), fishing effort and capacity exceed that needed to take the MSY. As a result, trip landing and frequency limits have become more restrictive. As the amount of fish that may be landed is reduced, discards increase. This occurs because: (1) It is difficult to keep the catch of some species within trip limits; and (2) fishermen generally try harder to take the entire trip limit when it is lower, resulting in excess fish being caught and discarded, many of which are undersized.

To address these problems, particularly as they relate to the trawl fishery for the deepwater complex (sablefish, Dover sole, and thornyheads), the Council considered three options for minimum mesh size for roller trawl gear in the Vancouver, Columbia, and Eureka subareas. The minimum mesh size in the Monterey and Conception subareas is already 4.5 inches (11.43 cm). The major options considered were: (1) The status quo, which allows mesh smaller than 4.5 inches (11.43 cm), but no smaller than 3.0 inches (7.62 cm); (2) allowing mesh smaller than 4.5 inches (11.43 cm), but larger than 3.0 inches (7.62) cm), only if possessing less than 1,000 pounds (2,200 kg) of flatfish, sablefish, the *Sebastes* complex of rockfish, thornyheads, Pacific cod, lingcod, Pacific ocean perch or widow rockfish; and (3) prohibiting mesh smaller than 4.5 inches (11.43 cm) for all groundfish species caught in the Vancouver, Columbia, and Eureka subareas.

The Council rejected the status quo because it does not adequately address the issue of bycatch and discard of unmarketable fish. The second alternative was rejected because fishermen testified that allowing small mesh for other groundfish species, such as dogfish, was not necessary. The Council recommended the third alternative, increasing the minimum mesh size for roller gear from 3.0 to 4.5 inches (7.62 to 11.43 cm) for roller gear in the Vancouver, Columbia, and Eureka subareas because it would reduce the discard and waste of undersized and unmarketable groundfish. Thus, all roller and bottom trawls would be required to have codends with a minimum mesh size of 4.5 inches (11.43 cm) coastwide (currently bottom trawls must have mesh size of at least 4.5 inches (11.43 cm)). Also, current gear provisions that allow the use of double-walled codends (50 CFR 663.22(b)(4)), stipulate and size and placement of rollers on the footrope (50 CFR 663.22(b)(7)(i)), and prohibit the use of tickler chains (50 CFR 663.22(b)(7)(ii)), would be removed because they apply only to the use of roller gear with mesh size smaller than 4.5 inches (11.43 cm). To prevent fishing vessel operators from switching 4.5-inch-mesh (11.43-cm-mesh) codends with small-mesh codends, which remain legal on midwater trawl gear, the provision that currently requires continuous riblines on bottom trawl gear when carrying aboard a net with mesh less than 4.5 inches (11.43 cm) (50 CFR 663.22(b)(5)) would also be applied to roller trawls.

The Council's intent is: (1) To reduce waste caused by discarding fish that are too small to market or that exceed the trip limit; (2) to postpone the need for more restrictive trip limits until later in the year; and (3) to increase long-term yield by reducing the current harvest of juvenile groundfish.

Changes to gear restrictions may be made under the "points of concern" (biological) or socioeconomic frameworks in the FMP. Any change to trawl specifications will have both biological and socioeconomic impacts. Although the Council recommended the gear change for biological reasons, there also will be social and economic impacts, which are described in the EA/RIR prepared by the Council and summarized below. The Council considered public comment on the options at its March and April 1991 meetings. Additional public comment will be accepted following publication of this proposed rule in the **Federal Register** (see **ADDRESSES**).

Most of the following discussion of impacts of the proposed action is based on preliminary results from the first year of a 3-year study comparing the effects of different mesh sizes while fishing for different mixes of groundfish species. It is the only scientific information currently available from which to address the effects of the proposed change in minimum mesh size in the Pacific coast groundfish fishery. The portions of the study most relevant to this proposed rule examined the rockfish fishing strategy (roller gear) and the flatfish fishing strategy (roller gear and bottom gear).

Biological Impacts

a. Size Composition

A change in mesh to 4.5 inches (11.43 cm) would have a positive net benefit for all three species in the deepwater complex (sablefish, Dover sole, and thornyheads), Pacific ocean perch, and widow rockfish by increasing the yield per recruit for these species. However, yellowtail rockfish and canary rockfish showed very little increase in mean length.

An increase in average fish length implies that fewer juvenile fish are caught. At this time it is not possible to determine the relationship between size composition of the catch and spawning biomass, but any upward trend in length composition means reduced fishing mortality on smaller fish, and thus increased survival to maturity.

b. Spawning Biomass

Although spawning biomass may be enhanced with an increase in minimum mesh size, the changes probably will not be measurable with existing data and assessment methods.

c. Discards

Size-based discards will be reduced substantially for some species. In general, discards (in pounds per trawl-hour) were reduced for both the rockfish and flatfish fishing strategies. The study indicated the following reductions in discard as a percent of total catch when mesh size is increased from 3.0 to 4.5 inches (7.62 to 11.43 cm): Dover sole—from 9.7 to 1.2 percent; sablefish—from 14.8 to 9.5 percent; longspine thornyhead—from 10.2 to 4.9 percent; shortspine thornyhead—from 9.1 to 3.3 percent. Discards probably would not be reduced as much under the proposed rule, because fishermen using mesh smaller than 4.5 inches (11.43 cm) often use mesh larger than 3.0 inches (7.62 cm). Discards of other species were reduced by a smaller percent or did not change. There was no discard of canary rockfish and negligible discard of widow and yellowtail rockfish.

Economic Impacts

Direct Costs

Approximately 342 trawl vessels operated in 1989. It is not known how many of these vessels used or carried roller gear with mesh smaller than 4.5 inches (11.43 cm). Because trawl vessels commonly follow different strategies, a vessel that carries roller gear is likely also to carry bottom trawl gear. Consequently, many trawl vessels are likely to have 4.5-inch (11.43-cm) codends, which already are required for

roller gear in the Monterey and Conception subareas and for bottom trawls coastwide. Fishermen who do not have 4.5-inch (11.43-cm) codends already will have to purchase either new webbing at $500 per codend or a new codend from a net maker at approximately $2,000 per net. Most fishermen prefer to have at least two nets on board, so the cost would be approximately $1,000 to $4,000 per vessel, with the larger direct cost to fishermen who recently purchased new codends with mesh smaller than 4.5 inches (11.43 cm). However, most groundfish trawl fishermen have been aware that this change was coming as a result of Council discussions since September 1990. Many fishermen already will have replaced worn-out gear with new mesh of the larger size. Consequently, the cost of this gear change should be viewed as a maximum, one-time cost for those fishermen who have not already replaced worn-out gear.

Indirect Costs

a. Dollars per Trawling Hour

For most species, an increase in trawl mesh size will result in the catch of larger fish, but at slower rates. Preliminary data of dollars earned per trawling hour using 3.0-inch (7.62-cm) mesh compared with 4.5-inch (11.43-cm) mesh showed declines of as much as 63 percent in the rockfish strategy and 26 percent in the flatfish strategy with 4.5-inch (11.43-cm) mesh. However, in this study, vessels were not constrained with trip limits. Vessels are expected to be able to compensate for a reduced catch rate by increasing the duration of the tows.

b. Discards

The biomass discarded was substantially less when 4.5-inch (11.43-cm) mesh was used rather than 3.0-inch mesh (7.62-cm). Presumably these discards were due to market forces (e.g., fish were too small, the market is temporarily glutted, or the species was not marketable) rather than regulations, since trip limits did not apply at the time the study was conducted.

c. Gilling

Entanglement of fish in the mesh ("gilling") is mainly a function of fish size versus mesh size and will be influenced by the abundance and availability of small fish, towing time, and species involved. Rockfish are spiny and more likely to be gilled than most other species. Gilling has economic importance in that the crew must spend time clearing a heavily gilled net, which delays setting the next haul. Although the rate of gilling was higher in 4.5-inch (11.43-cm) than 3.0-inch (7.62-cm) mesh, the time to clear the net was about 11 minutes for both rockfish and flatfish strategies. Therefore, on average, gilling does not appear to be a significant issue.

d. Sorting

The time required to sort the catch (by species, by market category, or to separate fish to be discarded) also is affected by mesh size. Although data were inconsistent regarding sorting time for rockfish, the sorting time in the flatfish strategy was substantially reduced, and the savings in sorting time was greater than time spent removing gilled fish.

Effect on Other Management Measures

Larger mesh size alone will not preclude or eliminate the need for continued use of trip limits. While an increase in mesh size will decrease the catch-per-hour-towed, the decreased catch rate will not necessarily lengthen trips or delay attainment of harvest guidelines. This is especially true with species with high catch rates such that the total tow time necessary to catch a trip limit is a small fraction of the total trip duration. Yellowtail and widow rockfish are in this category. An increase in trip duration seems more likely for species like thornyheads, which typically are caught in long tows.

Classification

This proposed rule is published under authority of section 305(d) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(d), and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law. The Assistant Administrator, before publishing a final rule, will take into account the data and comments received during the comment period and during subsequent Council meetings.

The Council prepared an environmental assessment (EA) for this proposed rule, and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This conclusion is based on the regulatory impact review and the preamble to this proposed rule. Although there will be short-term economic costs for those fishermen who will need to purchase or modify their gear, long-term economic benefits are expected if discards are reduced and long-term yield is increased. Many fishermen are believed to own 4.5 inch webbing already, since it is required in bottom trawls coastwide and in roller trawls in the Monterey and Conception subareas. In addition, fishermen routinely replace trawl codends because they wear out, and this is a normal cost of business. Consequently, the Assistant Administrator initially determined that this proposed action would not have a significant impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis for this action was not prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Council has initially determined that this proposed rule is consistent to the maximum extent practicable with the applicable State coastal zone management programs. This initial determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing.

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

Dated: September 6, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.22, paragraph (b)(7) is removed, and paragraphs (b) (2), (3), (4), and (5) are revised, to read as follows:

§ 663.22 Gear Restrictions.

* * * * *

(b) * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. The minimum sizes apply to the last 50 meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.62 or 11.43 cm) (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the codend.

MINIMUM TRAWL MESH SIZE

[In inches] [1]

Trawl type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Roller or bobbin	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.62 centimeters; 4.5 inches = 11.43 centimeters

(3) *Chafing gear.* (i) Chafing gear must not be connected directly to the terminal (closed) end of the codend.

(ii) In all bottom trawls, chafing gear must have a minimum mesh size of 15 inches (38.1 cm), unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(iii) In roller and bobbin trawls in the Vancouver, Columbia, and Eureka subareas, and all pelagic trawls, chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches (15.24 cm).

(4) *Double-walled codends.* Double-walled codends must not be used in any trawl.

(5) *Bottom, roller or bobbin trawls.* A net used in a bottom, roller or bobbin trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch (11.43 cm) mesh size.

* * * * *

[FR Doc. 91-21921 Filed 9-9-91; 11:20 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 177
Thursday, September 12, 1991

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

Forest Service

Management Direction on Northern Spotted Owls; National Forests in Oregon, Washington, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice; public hearings on draft environmental impact statement.

SUMMARY: The USDA Forest Service is preparing a draft environmental impact statement (DEIS) on a management plan for the northern spotted owl in National Forests in Oregon, Washington, and northern California. The DEIS is scheduled to be released on or about September 27, 1991, for a 3-month public comment period. To facilitate comment on the DEIS, three public hearings have been scheduled.

DATES: The date and time for each hearing are listed below. Each hearing will have both an afternoon and an evening session.

Tuesday, October 15, 1991, 1 p.m. and 6–9 p.m., in Olympia, Washington;

Thursday, October 17, 1991, 1–4 p.m. and 6–9 p.m., in Salem, Oregon;

Monday, October 21, 1991, 1–4 p.m., and 6–9 p.m., in Redding, California.

ADDRESSES: The hearings will be held at the following locations:

Olympia, Washington—Washington Performing Arts Center, 512 South Washington St., Olympia, Washington;

Salem, Oregon—Columbia Hall, State Fairgrounds, 2330 17th St. N.E., Salem, Oregon;

Redding, California—Holiday Inn, 1900 Hilltop Drive, Redding, California.

FOR FURTHER INFORMATION CONTACT: Jerry Mason, Spotted Owl EIS Team, 319 S.W. Pine Street, P.O. Box 3623, Portland, Oregon, 97208–3623, (503/326–7460).

SUPPLEMENTARY INFORMATION: The draft environmental impact statement will be available prior to the hearings. The notice of availability of the DEIS will be published in the **Federal Register** on or about September 27, 1991. Written comments on the DEIS will be accepted for 3 months after the notice of availability. Persons interested in obtaining a summary or a copy of the draft environmental impact statement should request it by writing or calling the office listed under **"FOR FURTHER INFORMATION CONTACT."**

To facilitate public comment on the DEIS, the Forest Service has scheduled formal hearings at which both oral and written comments will be accepted. To ensure everyone has an opportunity to be heard, speakers may be limited to three minutes. Speakers are encouraged to submit written comments as well. Each speaker's oral comments will be recorded and will receive equal consideration with written comments received prior to the close of the 3-month comment period.

Persons wishing to speak at the hearing should register at the meeting site on the day of the meeting. Registration will begin one hour before each hearing. Pre-registration prior to the hearing date will not be necessary nor will it be accepted. Elected officials and agency representatives will be allowed to speak first.

A Hearing Officer from the USDA Office of the General Counsel will conduct each hearing. Forest Service officials will be present to hear and read the comments.

Dated: September 6, 1991.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 91–21909 Filed 9–11–91; 8:45 am]
BILLING CODE 3410–11–M

Southern California Edison Co.; Lucerne Valley/Big Bear Valley 115kV Electric Transmission Line; San Bernardino National Forest, California Desert Conservation Area, San Bernardino County, CA; Revised Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Land Management, will prepare an Environmental Impact Statement (EIS) for a Southern California Edison Company (SCE) proposal to furnish additional electrical power to Big Bear Valley and surrounding areas. This Notice of Intent revises the one published in the **Federal Register** on August 1, 1991 and supplements that notice by identifying the Bureau of Land Management as a cooperating agency. The proposal is to provide 100 MW of capacity to Southern California Water Company's Bear Valley Electric District by constructing a 115 kilovolt (kV), double circuit, six conductor electric transmission line on National Forest System and Bureau of Land Management lands and an electrical system substation on National Forest System lands. The proposed transmission line would run from the existing Cottonwood Substation in Lucerne Valley to a new substation in the Big Bear Lake area. The substation would connect to Southern California Water Company's existing Bear Valley Electric District distribution system by way of two 33 kV underground circuits. The first circuit would connect to the existing North Shore 33 kV underground line; the second circuit would tie into the existing South Shore 33 kV circuit with 1400 feet of new underground line. The Forest Service will serve as the lead Federal agency and the Bureau of Land Management is a cooperating agency in meeting the requirements of the National Environmental Policy Act (NEPA).

Issues Identified

Initial scoping and discussions with the proponent have identified the following issues: Threatened and endangered species, sensitive plant species, wildlife, road location, visual quality, cultural resources, recreation, health and safety, economics, mineral development, air quality, water quality, and other land uses.

SUPPLEMENTARY INFORMATION: The proposed project includes a 14 mile long powerline and associated poles, a two and one-half acre substation complex (approximately 300 X 350 feet), and associated access/maintenance roads. Depending on the route selected, the proposal could also involve the removal of other powerlines, pole structures, and substation equipment. Single pole structures, H-frame structures, and a combination of both will be analyzed.

The existing 33 kV line from the Cottonwood Substation to the Goldhill Substation north of Baldwin Lake supplies most of the electrical power to

Big Bear Valley and the surrounding areas. Bear Valley Electric states that their electrical system currently operates at full capacity during peak demand periods. Based on the San Bernardino County General Plan and the Big Bear Lake Community Development Plan, future demand for electricity in the area is expected to increase as residential and commercial growth continue. Southern California Edison and Bear Valley Electric are proposing to construct the new system to meet all demand for the foreseeable future.

The Draft EIS (DEIS) is expected to be available for public review by April 1992 and comments will be received for a period of 60 days following the date that the notice of its availability is published in the **Federal Register**. It is important that those interested in the management of the San Bernardino National Forest and the Barstow Resource Area participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, (*Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1338 (E.D. Wisc. 1980)*). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service and Bureau of Land Management when they can meaningfully consider them and respond to them in the final document. All comments will be considered and analyzed in preparing the final EIS, which is scheduled to be completed by August 1992. The responsible officials will document their decisions in Records of Decision. The Forest Supervisor's decision will be subject to appeal under the provisions of 36 CFR 217 and the BLM State Director's decision under the provisions of 43 CFR 4.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft EIS. Comments must be received on or before October 15, 1991.

PUBLIC MEETING: A public meeting, to explain the proposal in more detail and to answer associated questions, was held at 10 a.m. on Saturday, August 17, 1991, at the Performing Arts Center, Big Bear Civic Center Office, 39707 Big Bear Boulevard, Big Bear Lake, CA.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Southern California Edison Company proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS to Paul Bennett, Special Uses Assistant, P.O. Box 290, Fawnskin, CA 92333, telephone (714) 866–3437.

Dated: September 3, 1991.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 91–21954 Filed 9–11–91; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting of the Board

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled its regular business meetings to take place in Hartford, Connecticut on Monday, Tuesday, and Wednesday, September 23–25, 1991 at the times and locations noted below. The Board has also scheduled a public forum on Wednesday, September 25, 1991 at the Legislative Office Building, Room 1D, State Capitol, Hartford, Connecticut.

DATES: The schedule of events is as follows:

Monday, September 23, 1991

8–11 am: Farmington Marriott, 15 Farm Springs Road, Farmington, CT.
Agenda: Planning Meeting.
2–3 pm: Winsted Post Office, Winsted, CT.
Agenda: Ribbon Cutting Ceremony.

Tuesday, September 24, 1991

Location: Legislative Office Building, Room 1C, State Capitol, Hartford, CT.
9–12 pm: Planning Meeting.
1:30–5:30 pm: Committee Meetings:

- Technical Programs 1:30–3:30
- Public Affairs 1:30–3:30
- Planning and Budget 3:30–5:30

Wednesday, September 25, 1991

Location: Legislative Office Building, Room 1D, State Capitol, Hartford, CT.
9–12 pm: Public Forum.
1:30–4:30 pm: Business Meeting.

MATTERS TO BE CONSIDERED: At the Public Forum, Board members will provide a brief overview of the final Americans With Disabilities guidelines and standards recently issued by the Board, the Department of Justice and the Department of Transportation. Then, members would like to hear from the public about any of the following subjects:

Most ADA standards will take effect in January 1992, after which these provisions must be used in new construction and alterations.

- How do you foresee the implementation of the ADA taking place?
- What issues or problems will arise in using the standards?
- How can the Board help to make this a successful effort?

The Board will publish additional ADA accessibility guidelines covering state and local government facilities, childrens' environments, and recreation facilities.

- What specific provisions or issues should these guidelines address?

The Board will also prepare guidelines to provide effective communications for hearing-impaired individuals on public transit vehicles.

- What do you think should be included?

Other issues.

At its business meetings, the Board will consider the following Agenda Items:

- Approval of the January 8, 1991 Board meeting minutes
- Rulemaking Awards
- Complaint Status Report
- Committee Reports
- Election of Officers

FOR FURTHER INFORMATION CONTACT: For further information regarding the business meetings, please contact Barbara A. Gilley, Executive Officer, (202) 653–7834 (voice/TDD). For further information regarding the Public Forum, please contact Larry Allison, Special Assistant for External Affairs, (202) 653–7834 (voice/TTD).

SUPPLEMENTARY INFORMATION: Some meetings may be closed to the public. All meetings are accessible to persons with disabilities. Sign language

interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee, Jr.,

Executive Director.

[FR Doc. 91-21983 Filed 9-11-91; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 0115-01 and 0115-02]

Action Affecting Export Privileges: Daniel Itturi, Individually and Doing Business as Sumisystem

Summary

Pursuant to the August 8, 1991, recommended Decision and Order on Default of the Administrative Law Judge, which is attached hereto and affirmed by me, Daniel Itturi, individually and doing business as Sumisystem, and all successors, assignees, officers, partners, representatives, agents, and employees are hereby denied for a period of fifteen years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768-799).

Order

On August 8, 1991, the Administrative Law Judge entered his recommended Decision and Order on Default in the above-referenced matter. The Decision and Order on Default, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts of this case, I hereby affirm the Decision and Order on Default of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: September 4, 1991.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Appearance for Respondent: Daniel Iturri, Individually and doing business as Sumisystem, Centenera 886, 1424 Buenos Aires, Argentina.

Appearance for Agency: Anthony K. Hicks, Esq., Office of Chief Counsel for Export Administration, room H-3839, 14th and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

On August 23, 1990, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Agency), issued a charging letter to Respondent Daniel Iturri, individually and doing business as Sumisystem (Respondents), charging the Respondents with violating §§ 787.3(a), 787.3(b) and 787.2 of the Export Administration Regulations (the Regulations) [1] (currently codified at 15 CFR parts 768-799) (1990), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420) (Supp. 1990)) (the Act).[2]

Because of the failure to answer, this Office issued an Order dated February 27, 1991, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by March 29, 1991, pursuant to § 788.8 of the Regulations, which provides:

Default (a) General

If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with the supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following disposition of contested charges.

Agency Counsel filed the Motion for Default Order on March 29, 1991. The Agency also submitted documentary evidence to support allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on March 29, 1991. A subsequent Order, directed Respondent to show cause why this matter should not be adjudicated on the basis of the Agency's default submission dated April 2, 1991, was sent to the Respondents, to which there has been no response.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Public Law 99-64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR parts 768-799, effective October 1, 1988 (43 FR 37751, September 28, 1988).

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (Supp. 1990)).

Facts

The charging letter alleged that, on or about September 8, 1988, Iturri conspired with Estela Beatriz Garcia (Garcia) to violate the Regulations, by attempting to export two Digital Equipment Corporation MicroVax II computers (hereinafter DEC computers) from the United States to Argentina and caused, counseled or induced Garcia to export from the United States to Argentina the two DEC computers without first obtaining the required validated license with respect to either aspect of the charges. The Agency alleged that, by so doing, Iturri committed one violation of § 787.3(b), one violation of § 787.3(a) and one violation of § 787.2 of the Regulations, respectively. Those allegations are supported by the documentary evidence submissions discussed in detail below.

The facts giving rise to the charges are as follows: On or about August 4, 1988, Iturri, located in Argentina, ordered two DEC computers from Midwest Systems, Inc. in Burnsville, Minnesota (Midwest) for export to Argentina (Agency Ex. 1). Those computers were controlled for reasons of national security at all times relevant to this matter under Export Commodity Control Number 1565A (Agency Ex. 2). Also on or about August 4, 1988, Midwest employees told Iturri that the DEC computers required a validated license to be exported from the United States to Argentina (Agency Ex. 1).

In response, Iturri said that he would not have enough time to obtain such a license and suggested to Midwest that it break up the shipment so that it would meet the requirements of General License GLV [3] (Agency Ex. 1). When Midwest declined, Iturri suggested that it send the DEC computers to either New York or Miami, without at that time specifying which (Agency Ex. 1). Iturri also suggested that he might come to Minnesota to pick up the DEC computers (Agency Ex. 1).

On August 18, 1988, Iturri instructed Midwest to send the DEC computers to Martin Ritter (Ritter) at the Renger Corporation (Renger), an exporting firm, in Miami, Florida (Agency Exs. 5 and 1). On August 28, after receiving final payment for the DEC computers, Midwest shipped them to Renger in Miami via CF Air Freight (Agency Ex. 1 and Ex. 6). The CF Air Freight delivery receipt had the following notation stamped on the front: "Export of these

[3] General license GLV authorizes the shipment of certain commodities that are under a given dollar value to certain locations without a validated license. See § 771.5 of the Regulations.

commodities from the U.S. requires an export license issued by the Department of Commerce." (Agency Ex. 7).

Prior to August 30, 1988, Ritter had been informed through a third party that Iturri wanted to ship some "stuff" to him from Midwest so that Ritter could ship it from Miami to Iturri in Argentina (Agency Ex. 1). On or about September 1, 1988, the shipment from Midwest arrived at Renger (Agency Ex. 1). However, when Ritter saw the delivery receipt, he became "nervous" and decided that he was not willing to export the DEC computers (Agency Ex. 1).

On September 3, 1988, Ritter informed Iturri, through others, that he was not willing to export the DEC computers (Agency Ex. 1). Also on September 3, 1988, Ritter learned from one of Iturri's associates that the DEC computers were destined for the Commission Nacional de Energia Atomica (CONEA) in Argentina, a potential nuclear end-user.

On September 6, 1988, Iturri in Argentina, called Ritter, in Miami, and told him that he was sending a woman named "Estela" to Miami to pick up the DEC computers (Agency Ex. 1). Inturri asked whether the shipment would fit into suitcases and Ritter advised that it would (Agency Ex. 1).

A few minutes after Ritter's phone conversation with Iturri ended, a woman who called herself Estela Garcia called Ritter from Argentina (Agency Ex. 1). Garcia told Ritter that she would be leaving Argentina that day for Miami to pick up the DEC computers. (Agency Ex. 1). Ritter and Garcia agreed to meet at Renger on September 8, 1988 (Agency Ex. 1). Garcia informed Ritter that she planned to pick up the computers and return to Argentina with them on September 8, 1988 (Agency Ex. 1).

On September 8, 1988, Garcia arrived at Renger with three large suitcases (Agency Ex. 1 and Ex. 8). A Spanish-speaking undercover agent from the Agency, posing as a Renger employee, advised Garcia several times that the DEC computers required U.S. Department of Commerce validated export license to be shipped from the United States to Argentina (Agency Ex. 1 and Ex. 8). The agent also advised Garcia in Spanish that the unlawful export of the DEC computers could result in severe criminal penalties (Agency Ex. 1 and Ex. 8). Garcia responded by stating that she understood, but was nevertheless determined to take the DEC computers to Argentina (Agency Ex. 1 and Ex. 8).

Also on September 8, 1988, Ritter called Iturri (Agency Ex. 9). Garcia was also on the line, the conversation took place in Spanish and the Agency recorded it (Agency Ex. 9). During that conversation, Garcia and Iturri discussed whether Garcia's suitcases were large enough for the DEC computers, the number of her return flight and the time Iturri should meet Garcia's plane in Buenos Aires (Agency Ex. 9). In addition, Iturri stated that the "Garcia" on the telephone was the "Estela" he had sent to get the computers (Agency Ex. 9). Iturri also instructed Garcia that, if she was asked by the authorities about whether she had validated export license for the DEC computers, she should say that the computers were worth less than $5000 and that, therefore, such a license was not required (Agency Ex. 9). Iturri also instructed Garcia to remove from the DEC computers anything about the price of the computers (Agency Ex. 9).

After the three-way telephone conversation, Renger employees packed the DEC computers into Garcia's suitcases and, at her request, delivered them to her hotel (Agency Ex. 1). In the hotel lobby, the Agency's undercover agent again informed Garcia, in Spanish, that the DEC computers could not be exported from the United States to Argentina without a validated export license (Agency Ex. 1).

In the evening of September 8, 1988, Garcia went from her hotel room to Miami International Airport, taking with her approximately 10 suitcases containing the DEC computers (Agency Ex. 1). At about 9 p.m. Garcia presented the suitcase at the baggage counter at Aerolines Argentinas for flight number 333 to Buenos Aires (Agency Ex. 1 and Ex. 10). The Agency's agents arrested her at that time and seized the 10 suitcases containing the two DEC computers (Agency Ex. 1 and Ex. 11). A search of the pertinent records indicates that neither Iturri nor any other person ever applied for the validated export license necessary to lawfully export the DEC computers from the United States to Argentina (Agency Ex. 1). On September 16, 1988, Garcia was indicted by a Federal Grand Jury in the Southern District of Florida for attempting to violate the Act (Agency Ex. 12).

On September 27, 1988, Iturri called the Agency and spoke with a special agent (Agency Ex. 1). During that conversation, Iturri admitted that he had ordered the DEC computers from Midwest and that Midwest had informed him that a validated export license was necessary to export the DEC computers to Argentina and that it would take around 30 days to obtain such a license (Agency Ex. 1).

Iturri also admitted that, because his customer needed the DEC computers right away, he had arranged for Midwest to ship them to Ritter in Miami, who would then export them to Argentina (Agency Ex. 1). Iturri stated that Ritter subsequently refused to handle the export (Agency Ex. 1). As a result, Iturri said he sent Garcia to pick up the computers in the United States and bring them to Argentina (Agency Ex. 1).

On October 14, 1988, Iturri was indicted by Federal Grand Jury in the Southern District of Florida with one count of attempting to unlawfully export the DEC computer system and with one count of conspiring with Garcia to violate the Act (Agency Ex. 13). On that same date, a superseding indictment charged Garcia with attempting to unlawfully export the DEC computer system and with one count of conspiring with Iturri to violate the Act (Agency Ex. 13). On October 24, 1988, Garcia plead guilty to one count of conspiring with Iturri to violate the Act and was sentenced to time served, approximately three months (Agency Ex. 14). Iturri is a fugitive from justice (Agency Ex. 1).

In addition, on November 1, 1990, Garcia settled her administrative case with the Agency wherein the Agency alleged that, in connection with the transaction at issue here, Garcia conspired with Iturri in an attempt to violate §§ 787.3(a) and 787.3(b) of the Regulations (Agency Ex. 15). In the Consent Agreement entered into between the Agency and Garcia, Garcia admitted that the facts alleged in the proposed charging letter were true, and that based on those facts, she had violated the Act and the Regulations as alleged in the proposed charging letter (Agency Ex. 15). The facts alleged in the proposed charging letter are identical to those alleged in the charging letter the Agency issued to Iturri (Agency Ex. 15). In light of the conclusion that Iturri and Garcia were co-conspirators in these violations, the disposition of the proceedings related to Garcia, both administrative and criminal, will be considered here. *Estela B. Garcia,* 55 FR 50,049 (1990).[4]

Discussion

Under § 787.3(b) of the Regulations, no person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act or any Regulation issued under

[4] The disparity of a two year denial for Garcia versus a 15 year denial for Respondent Iturri is consistent. Garcia appears merely to have been the messenger, while Iturri was clearly the one who arranged and effectuated the illegal actions.

the Act. The Agency has demonstrated that Iturri violated that provision.

A conspiracy consists of an agreement among two or more persons to commit an unlawful act or a lawful act by unlawful means. All that is necessary for an agreement is that the parties communicate to each other in some way to demonstrate their intentions to pursue a joint objective. The agreement does not have to be formulated in words, but rather each party might by his actions alone make clear their pursuit of a common objective. *United States* v. *Falcone,* 311 U.S. 205 (1940); *United States* v. *Dumas,* 688 F. 2d. 84 (10th Cir. 1982).

The Agency's evidence establishes that, on or about August 4, 1988, Iturri ordered the two DEC computers from Midwest, that the DEC computers were of U.S.-origin because they were located in the United States, that the DEC computers were controlled under 1565A for reasons of national security and that, as such, they required a validated license to be exported from the United States to Argentina.

The evidence also establishes that Iturri was informed that the DEC computers required an export license and that Iturri did not want to apply for one, ostensibly because it would take too long to apply for one, and that, in fact, he never applied for or obtained such a license, directly or indirectly. Rather, Iturri decided to attempt to avoid that requirement.

Initially, he went to Midwest, asking it to break up the shipment so that the requirement of General license GLV could be met. When Midwest declined, Iturri turned to Renger, and when Renger refused, approached Garcia. Garcia clearly agreed to help Iturri with his unlawful scheme. She came to the United States on his behalf, knew Iturri and actually tried to export the DEC computers in 10 suitcases even after she was repeatedly told, at least once with Iturri listening, that it was unlawful to do so. Moreover, she agreed to take part in the export after Iturri instructed her to lie about the value of the DEC computers if questioned by authorities.

The evidence further establishes that, in connection with the very same set of facts at issue here, on October 24, 1988, Garcia plead guilty to conspiring with Iturri to violate the Act. Moreover, on November 1, 1990, Garcia made a similar admission by signing a Consent Agreement with the Agency wherein she admitted that she conspired with Iturri to export the DEC computers from the United States to Argentina. Admissions, confessions, and statements made by a co-conspirator, Garcia, are clearly admissible and may be used against another co-conspirator, Iturri, if there is sufficient independent evidence, outside of the hearsay confession, to demonstrate that there was, in fact, a conspiracy. *United States* v. *James,* 590 F. 2d 575 (5th Cir. 1979); *United States* v. *Palladino,* 203 F. Supp. 35 (1962); see also Federal Rule of Evidence 801(d)(2)(E)). In fact, telephone conversations between a defendant and another member of a conspiracy constitutes sufficient independent evidence to allow the admission of a co-conspirator's statement into evidence. *United States* v. *Weisz,* 718 F. 2d 413 (DC Cir. 1983); *United States* v. *Perez,* 658 F. 2d 654 (9th Cir. 1981)).

In short, the Agency's direct and circumstantial evidence establishes that Iturri and Garcia agreed to jointly pursue an unlawful objective; exporting the two DEC computers from the United States to Argentina in Garcia's suitcase without first obtaining the validated license required by § 772.1(b) of the Regulations.

In addition, § 787.3(a) of the Regulations prohibits any person from doing an act that constitutes an attempt to bring about a violation of the Act or any regulation issued under the Act. The Agency's contention that Iturri violated that provision, even though Garcia was the one who physically attempted to export the DEC computers, is supported by the facts.

The Agency's position is based on the general rule that, once a trier of fact has found that a conspiracy exists, it is a general proposition of law that any act of any one of the conspirators in the course of the conspiracy is fully attributable to each of them. *Pinkerton* v. *United States,* 328 U.S. 640 (1946). With this is mind, the Agency's evidence establishes that Garcia and Iturri conspired to violate the Regulations in violation of § 787.3(b).

As related above, September 8, 1988, Garcia checked in 10 suitcases containing the DEC computers at Aerolineas Argentinas for a flight to Buenos Aires, Argentina, that same evening. Iturri had agreed to meet her and the computers when she arrived in Buenos Aires. Neither she nor any other party had obtained a validated license for the DEC computers, though one was required. The export never actually occurred because the DEC computers were seized by the Agency's agents. However, Garcia's actions clearly went beyond mere preparation because she had checked the DEC computers in for a flight that was to leave shortly thereafter. But for the Agency's interference, the DEC computers would have been exported. Based upon Garcia's actions up to the moment of her arrest, the evidence establishes that Garcia attempted to export the two DEC computers. Those acts met the requirements that an attempt must be an act which goes beond mere preparation. (Lafave and Scott, Criminal Law, at 423, (1972)).

In short, Garcia attempted to do an act that constitutes a violation of the Regulations: exporting the DEC computers without the validated license required under § 772.1(b) of the Regulation. By so doing, Garcia violated § 787.3(a) of the Regulations, an assertion that is underscored by Garcia's admission in that regard in connection with the Agency's administrative case against her. Therefore, under the general rule that the acts of one conspirator are fully contributable to another, Garcia's acts are attributable to Iturri because they were co-conspirators. Accordingly, because Garcia's actions constituted a violation of § 787.3(a) of the Regulations, this Tribunal also finds that Iturri violated that provision.

With respect to the charges made, under § 787.2 of the Regulations the Agency's evidence establishes that Iturri was the driving force behind an unlawful export. He ordered the two DEC computers, and after learning that they required a validated export license, looked for a way to export those computers from the United States without first obtaining that license. Iturri found Garcia and sent her to the United States to do his "dirty work"; that is, exporting the DEC computers without the required license.

Moreover, Iturri counseled Midwest to split up the shipment and Garcia to lie, if questioned, about the value of the computers, in an effort to improperly bring the shipment within the purview of General License GLV. Under-valuing shipments to bring them within the ambit of General License GLV is prohibited by § 771.5 of the Regulations. In view of the foregoing, this Tribunal finds that Iturri violated § 787.2 of the Regulations.

Conclusion

From the evidence presented by the Agency, I conclude that Daniel Iturri, individually and doing business as Sumisystem did commit 3 violations of the Export Administration Act and the Regulations promulgated thereunder as charged.

In light of the seriousness of the violations established here and the disposition in other cases, I agree with the recommendation that the Respondent Daniel Iturri, individually

and doing business and Sumisystem be denied export privileges for 15 years.

Order

I. For a period of 15 years from the date of the final Agency action, Respondent:

Daniel Iturri, individually and doing business as Sumisystem
Cullen 5375 (1431) Capital Federal Republica Argentina
and
Rodriguez Pena 453 P.B. "B", (1020) Capital Federal Republica Argentina

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. 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.A. app. 2412(c)(1)).

Dated: August 8, 1991.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-21696 Filed 9-11-91; 8:45 am]
BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 51-91]

Foreign Trade Zone 152—Burns Harbor, IN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 152, requesting authority to expand its zone in Burns Harbor, Indiana. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400), and was formally filed on September 5, 1991.

FTZ 152 was approved on December 9, 1988 (Board Order 393, 53 FR 52454, 12/28/88), and currently covers 441 acres within the Port of Indiana/Burns International Harbor (Burns Harbor) in Porter County, Indiana.

The grantee is now requesting authority to expand the zone to include an additional warehousing site (533,288 sq. ft.) located at 201 Mississippi Street, within the Great Lakes Industrial Center, in Gary, Indiana, some 10 miles from the existing site. The site is owned by Great Lakes Investors I and is operated by Roll and Hold Warehousing and Distribution, a division of Area Transportation Company. No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Larry K. Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 S. Canal Street, Chicago, IL 60607; and Lt. Colonel Frank R. Finch, District Engineer, U.S. Army Engineer District Chicago, 219 S. Dearborn St., Chicago, IL 60604.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 21, 1991.

A copy of the application is available for public inspection at each of the following locations:

Port Administration Building, Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana 46368.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: September 6, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-22002 Filed 9-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 50-91]

Consolidated Application for Extension of Authority, Expansion, and Removal of Certain Restrictions for Subzones 122D, 122E, and 122H Corpus Christi, TX

During April-June 1991, the Port of Corpus Christi Authority (PCC) submitted applications to the Foreign-Trade Zones Board (the Board) requesting: An indefinite extension of authority and the removal of certain restrictions applicable to Subzones 122D, 122E, and 122H; the expansion of Subzones 122E and 122H; and, new manufacturing authority for Subzone 122H. The applications have been consolidated as a single-docketed case (FTZ Docket 50-91). The consolidated application was formally filed September 5, 1991.

In September 1985, the three subzones were approved with restrictions (Board Order 310, 50 FR 38020, 9/19/85). In two recent Board actions affecting certain restrictions, the time period for the subzones was temporarily extended to 9/5/92 (Board Order 536, 8/30/91) and the central control system restriction was removed (Board Order 529, 56 FR 42310, 8/27/91).

Subzone 122D, Gulf Marine Fabricators, Inc. (GMF), produces offshore platforms and drilling production modules for oil and gas. The duty rates on the foreign-sourced steel mill products range from 2.8 to 8.0 percent. Duties on the finished products range from 5.0 to 5.7 percent. GMF has requested that the Board rescind the export-only restriction, as well as the requirement that Customs duties be paid on foreign-sourced steel mill products prior to production activity. This would allow duty exemptions on foreign-sourced items used to build platforms and modules that are exported and, in regard to those imported, the election of the finished-product duty rate.

Subzone 122E, Berry Contracting, Inc., is also engaged in construction of offshore platforms and drilling modules, as well as steel towers and columns for the oil and gas industries. Berry's request and zone usage are similar to that of GMF. The applicant further requests that an additional 30.26 acres be added to this subzone site.

Subzone 122H, Hitox Corporation of America, manufactures inorganic pigments. The original authority involved the manufacture of buff titanium dioxide pigment (brand name, Hitox) using foreign-sourced synthetic rutile. (Duty rate on rutile is 5% (temporarily suspended to 1992) and 6% on finished pigment). Hitox now requests authority to manufacture barytes under zone procedures. The duty rate on barytes ore is $1.25 per metric ton, and duties would be paid at this rate on any ores used in producing items for import (rate for finished barytes is $3.20 per metric ton). Zone procedures would exempt Hitox from Customs duty payments on the foreign material used in its exports. Hitox also requests that 10.82 acres be added to the current subzone.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057-3012; and, Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553-1229.

Comments concerning the applications are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 21, 1991.

A copy of the applications and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, Government Plaza, 400 Mann Street, suite 305, Corpus Christi, Texas 78401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., room 3716, Washington, DC 20230.

Dated: September 6, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-22003 Filed 9-11-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-538-802]

Preliminary Determination of Sales at Less Than Fair Value: Shop Towels From Bangladesh

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

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3464.

Preliminary Determination

The Department preliminarily determines that shop towels from Bangladesh are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on April 25, 1991 (56 FR 19088), the following events have occurred. On May 8, 1991, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of shop towels from Bangladesh.

On May 17, 1991, the Department presented its questionnaire to Greyfab (Bangladesh) Ltd., Sonar Cotton Mills (B.D.), Ltd., and Eagle Star Textile Mills, Ltd. These three companies accounted for over 60 percent of shipments by volume to the United States during 1990. On May 29, 1991, these three companies indicated that they had no home market or third country sales. Accordingly, on June 14, 1991, the Department presented the constructed value section of the questionnaire to these three companies. Responses to the questionnaire were received on June 21 and July 25, 1991. In its July 25, 1991, response, Greyfab indicated that it made no sales during the period of investigation (POI). Accordingly, we have not included Greyfab in the calculations for the preliminary determination.

Scope of Investigation

The product covered by this investigation is shop towels. Shop towels are absorbent industrial wiping

cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under items 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is October 1, 1990, through March 31, 1991.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category or "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of shop towels from Bangladesh to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

A. Eagle Star

We calculated purchase price based on packed, delivered C&F prices. We made deductions, where appropriate, for foreign inland freight, foreign freight forwarding, handling and jetty charges, and ocean freight, in accordance with section 772(d)(2) of the Act.

B. Sonar

We calculated purchase price based on packed, delivered C&F prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, and ocean freight, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

We calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act, because neither respondent sold such or similar merchandise in the home market or in any third-country markets during the POI. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing.

A. Sonar

We used Sonar's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. Interest expense was recalculated because the submitted data was not supported by Sonar's financial statements. As best information available (BIA), the interest expense reported on Sonar's financial statement was used to calculate interest expense for the preliminary determination.

2. Sonar failed to include an amount for credit expense in reporting its U.S. selling expenses. Furthermore, Sonar did not report the date of receipt of payment for any of its U.S. sales. As BIA, we therefore calculated credit expense by using the average period for which payment was outstanding on U.S. sales reported in Eagle Star's public submission. We multiplied the result by a publicly available interest rate obtained from the countervailing duty investigation of shop towels from Bangladesh.

We used Sonar's actual general expenses in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the sum of the cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because Sonar did not have any home market or third country sales on which to compute profit. We used U.S. selling expenses, as BIA, for CV because Sonar had no sales of the class or kind of merchandise in the home market or to any third country. We added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made a circumstance of sale adjustment for differences in credit expenses.

B. Eagle Star

We used Eagle Star's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. Depreciation expense was recalculated because the methodology used by Eagle Star did not include all depreciation expenses recorded on the company's financial statement. As BIA, depreciation expense was adjusted based on the amount recorded on Eagle Star's financial statement.

2. Interest expense was recalculated using the ratio of Eagle Star's interest expense to cost of sales from the financial statement and applying this rate to the cost of manufacture.

3. Eagle Star did not include an amount for credit expense in reporting its U.S. selling expenses. As BIA, we calculated credit expense using the number of days between the date the merchandise was shipped and the date payment was received. We used a publicly available interest rate obtained from the countervailing duty investigation of shop towels from Bangladesh.

4. Direct selling expenses were reduced because movement charges were included in the direct selling expenses reported by Eagle Star.

We used Eagle Star's actual general expenses in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because Eagle Star did not have any home market or third country sales on which to compute profit. We used U.S. selling expenses, as BIA, for CV because Eagle Star had no sales of the class or kind of merchandise in the home market or to any third country. We added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made a circumstance of sale adjustment for differences in credit expenses.

Currency Conversion

In our analysis, we normally make currency conversions in accordance with 19 CFR 353.60, using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York does not provide exchange rate information for Bangladesh, we used the average exchange rate for Bangladesh for the POI published in the International Monetary Fund's International Financial Statistics.

Verification

As provided in section 776(B) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation on all shipments of shop towels from Bangladesh, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or

posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Sonar Cotton Mills (B.D.) Ltd.	12.49
Eagle Star Textile Mills, Ltd.	26.63
All others	13.17

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than November 1, 1991, and rebuttal briefs no later than November 6, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 8, 1991, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: September 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–22004 Filed 9–11–91; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–574,159, entitled "Treated Bird Seed Preferentially Palatable to Birds but not Palatable to Animals Having Capsaicin Sensitive Receptors" to Dunn/Frey Partnership having a place of business in Amherst, NY. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 C.F.R. 404.7.

The present invention is directed to preparations of birdseed treated with capsaicin or capsaicin derivatives or analogues thereof in an amount sufficient to be unpalatable to animals having capsaicin sensitive receptors, and more specifically to mammals such as rodents. These "hot" compounds, extracts or whole plant material containing these compounds may be coated on, impregnated in or combined (e.g., mixed) with birdseed to repel troublesome mammals which recognize these compounds as "hot." These "hot" compounds, in contrast, will not repel birds because birds do not recognize these compounds as "hot" since they do not have capsaicin sensitive receptors. The invention is further directed to a method of selectively repelling animals having capsaicin sensitive receptors, which comprises feeding the treated birdseed of the invention to birds, in an amount effective for repelling animals having capsaicin sensitive receptors, thereby discouraging said animals from eating the treated birdseed.

The availability of SN 7–574,159 for licensing was published in the **Federal Register** Vol. 56, #64, p. 13628 (April 3, 1991).

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91–21962 Filed 9–11–91; 8:45 am]

BILLING CODE 3510-04-M

CONGRESSIONAL BUDGET OFFICE

Transmittal of Low-Growth Report to Congress and the Office of Management and Budget

September 9, 1991.

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Low-Growth Report to the House of Representative, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 91–22116 Filed 9–11–91; 8:45 am]

BILLING CODE 1450-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement—Part 219, Small Business and Small Disadvantaged Business Concerns.

Type of Request: Expedited Submission—Approval Date Requested: October 7, 1991.

Average Burden Hours/Minutes Per Response: 1 hour.

Responses Per Respondent: 2.

Number of Respondents: 30.

Annual Responses: 60.

Needs and Uses: Section 831 of the Fiscal Year 1991 Department of Defense (DoD) Authorization Act (Pub. L. 101–510) requires the Secretary of Defense to establish a pilot program to provide incentives for DoD contractors to furnish disadvantaged small business concerns with assistance designed to enhance their capabilities to preform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts in order to increase the participation of such business concerns under DoD, other Federal Government, and commercial contracts. Because the law provides for credit toward subcontracting goals which are reported on Standard Form (SF) 295, "Summary Subcontract Report," and the law requires a report evaluating whether the purposes of the program have been attained, it is necessary to collect additional information to that currently required on the SF 295.

Affected Public: Businesses or other for-profit.

Frequency: Semiannually.

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

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: September 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–21966 Filed 9–11–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on Soviet Military will meet in closed session on 25 September 1991 from 0800 until 1600 at 1710 Goodridge Drive, TI–7–2, McLean, Virginia.

The mission of the Defense Policy Board Task Force on Soviet Military is to study developments in the Soviet Union that affect the Soviet Military and make recommendations on policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: September 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–21964 Filed 9–11–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 23–24 September 1991 from 0900 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: September 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–21965 Filed 9–11–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments for initial recognition or renewal of recognition by the Secretary.

DATES: Commenters are urged to submit their written comments by October 15, 1991, at the address below.

FOR FURTHER INFORMATION CONTACT: Charles I. Griffith, Director, Division of Agency Evaluation and Support, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3036 ROB–3). Washington, DC 20202–5171, Telephone: (202) 708–7417.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria. The purpose of this notice is to invite interested third parties to present written comments on petitions submitted by the agencies listed in this notice for initial or continued recognition, or change in scope of recognition.

Written comments will be considered by the Secretary and by the National Advisory Committee on Accreditation and Institutional Eligibility, which advises the Secretary of Education on the recognition of accrediting agencies, during its meeting in the Fall of 1991. The exact date of the Committee meeting will be announced in the **Federal Register** at a later date.

Because the Secretary may make decisions as to recognition only on the basis of the criteria in 34 CFR parts 602 and 603, comments should address only matters that are relevant to the criteria.

Accrediting Agencies

The following petitions have been submitted and are expected to be reviewed at the Fall, 1991 meeting of the Committee.

Petitions for Initial Recognition

1. Accrediting Commission of the American Association of Higher Education in Oriental Medicine (institutions and programs offering master's degrees in traditional Oriental medicine).

2. National Association of Private Nontraditional Schools and Colleges (private, nontraditional degree and non-degree granting institutions).

Petitions for Renewal of Recognition

3. Accreditation Board for Engineering and Technology, Inc. (basic [baccalaureate] and advanced [master's] level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate level).

4. American Board of Funeral Service Education, Committee on Accreditation (independent schools and collegiate departments).

5. American Library Association, Committee on Accreditation (master's programs leading to the first professional degree).

6. American Society of Landscape Architects, Landscape Architectural Accreditation Board (baccalaureate and master's programs leading to the first professional degree).

7. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (advanced Rabbinical and Talmudic schools).

8. Council on Chiropractic Education, Commission on Accreditation (programs leading to the D.C. degree).

9. Council on Education for Public Health (graduate schools of public health and graduate programs offered outside schools of public health in community health education and in community/health medicine).

10. Council on Social Work Education, Commission on Accreditation (master's and baccalaureate degree programs).

11. Foundation for Interior Design Education Research, Committee on Accreditation (two-year preprofessional assistant level programs [certificate and associate degree], first professional degree level programs [master's and baccalaureate degree and three-year certificate] and post-professional master's degree programs).

12. Middle States Association of Colleges and Schools, Commission on Higher Education (Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands).

13. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (specialized schools for the blind and visually handicapped, including organizations providing postsecondary vocational education programs that prepare the blind and visually handicapped for employment)

14. National Accrediting Commission of Cosmetology Arts and Sciences (postsecondary schools and departments of cosmetology arts and sciences)

15. National Association of Industrial Technology (baccalaureate degree programs)

16. National Association of Schools of Art and Design, Commission on Accreditation (degree-granting schools and departments and non-degree granting schools that are predominantly organized to offer education in art, design, or art/design-related disciplines)

17. National Association of Schools of Music, Commission on Accreditation (institutions and units within institutions offering degree-granting programs in music and music-related disciplines including community-junior colleges and independent degree-granting institutions)

Petition for Change in Scope of Recognition

National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (from first professional master's degree and professional master's level certificate and diploma programs in acupuncture, to first professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine).

Interim Reports

1. Accrediting Bureau of Health Education Schools.

2. American College of Nurse Midwives.

3. American Council on Pharmaceutical Education.

4. American Culinary Federation Educational Institute.

5. American Osteopathic Association.

6. Association of Independent Colleges and Schools, Accrediting Commission.

7. National Architectural Accrediting Board, Inc.

8. National Home Study Council.

9. National League for Nursing.

10. National Association of Trade and Technical Schools, Accrediting Commission.

11. New York State Board of Regents.

12. Southern Association of Colleges and Schools, Commission on Colleges.

13. Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

14. United States Catholic Conference.

State Approval Agencies

Petition for Renewal of Recognition

1. Iowa State Department of Education (for approval of public postsecondary vocational education).

Interim Reports

1. Colorado Board of Nursing (for approval of nurse education).

2. New York State Board of Regents (for approval of public postsecondary vocational education).

3. Office of the Superintendent of Public Instruction, State of Washington.

Public Inspection of Petitions and Third Party Comments

All petitions and interim reports, and those third party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, room 3036, 7th and D Streets, SW., Washington 20202–5121. Telephone (202) 708–8192. Deaf and hearing impaired individuals may call: The Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: August 14, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–21874 Filed 9–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Field Office, Oak Ridge, TN; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Council of Great Lakes Governors (CGLG) to organize and carry out a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The renewal award is to be in the amount of $643,000 to continue the project for a year. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CGLG has the unique capability to equally represent all of the states in the Great Lakes subregion and involve the appropriate private and public interest groups in the

states. CGLG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CGLG.

FOR FURTHER INFORMATION CONTACT: James W. Cooke, ER–112, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831–6269, (615) 576–0737.

Peter D. Dayton,

Director, Procurement & Contracts Division, Field Office, Oak Ridge.

[FR Doc. 91–21988 Filed 9–11–91; 8:45 am]

BILLING CODE 6450–01–M

Field Office, Oak Ridge, TN; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2) it intends to renew on a noncompetitive basis a grant to North Carolina A&T State University to support the institution's effort in developing the Center for Energy Research and Training (CERT). The grant is being renewed for a one-year period, effective September 30, 1991. The total estimated cost is $196,726, which consists of DOE funding in the amount of $128,355, and recipient cost sharing of $68,371.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Office of the Manager, Field Office, Oak Ridge, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8501, (615) 576–4988.

SUPPLEMENTARY INFORMATION: This grant renewal will allow the recipient to improve the technical and administrative capabilities at minority colleges to enhance energy-related research and development and increase the pool of minorities pursuing energy-related courses. During this phase of the project, the recipient will focus on encouraging research and increasing funds for disciplinary and interdisciplinary research; enhancing student's awareness and involvement in energy-related research, training and career opportunities; establishing training and service programs for off campus constituents in energy issues and management; and developing linkages with the private sector, government agencies, and other universities involved in energy research, development, and training, and developing a permanent infrastructure within the University to support energy research, training, and community service. Accomplishments during the initial phases of the project indicate that North Carolina A&T State University will fully achieve the objectives identified for the final year of this project with continued DOE funding; and that competition for support would result in considerable delay in achieving some of the results anticipated as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to North Carolina A&T State University.

Issued in Oak Ridge, Tennessee, on September 4, 1991.

Peter D. Dayton,

Director, Procurement and Contracts Division, Field Office, Oak Ridge.

[FR Doc. 91–21987 Filed 9–11–91; 8:45 am]

BILLING CODE 6450–01–M

Field Office, Oak Ridge, TN; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2) it intends to renew on a noncompetitive basis a grant to The University of Texas at El Paso (UTEP) to continue efforts to improve the University's administrative infrastructure. The grant is being renewed for one-year period, effective September 30, 1991. The total estimated cost is $201,562, which consists of the amount of $123,558, and recipient cost sharing of $78,004.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Office of the Manager, Field Office, Oak Ridge, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8501, (615) 576–4988.

SUPPLEMENTARY INFORMATION: This grant renewal will allow the recipient to continue its goal to develop energy related science and technology research centers at the University and thereby increase the interest and awareness of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on implementation of energy research, outreach, and demonstration projects; operation of the Energy Center as a separate operational entity to provide continuing infrastructure support for energy-related programs; strengthening university/private sector energy research linkages; and continuing support of multi-disciplinary energy research and outreach efforts. Based on the results experienced during the first three phases of this project, it is anticipated that the University of Texas at El Paso will fully achieve the objectives identified for the final year of this project with continued DOE funding; and that competition for support would result in considerable delay in achieving some of the results anticipated as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to the University of Texas at El Paso.

Issued at Oak Ridge, Tennessee on September 4, 1991.

Peter D. Dayton,

Director, Procurement and Contracts Division, Field Office, Oak Ridge.

[FR Doc. 91–21986 Filed 9–11–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No's. 432 and 2748]

Carolina Power and Light Co., North Carolina Electric Membership Corp.; Modification To Draft Environmental Assessment for Hydropower License; Walters/Waterville Project Environmental Analyses

August 16, 1991.

In the Draft Environmental Assessment (EA) issued in June 1991 in this proceeding, Staff recommended that artificial capping of sediments be provided in the upper 3.5 miles of the reservoir where sediment scour is prevalent, assuming the sediments can support the cap. (Draft EA at 37). Staff stated that it would conduct field studies, before finalizing the EA, to determine whether the artificial cap would be feasible.

Carolina Power & Light Company, and not Staff, will be conducting the field studies of whether the bottom sediments will support an artificial cap. Staff will reflect this fact in the final EA.

For further information, please contact John Blair, Environmental Assessment Coordinator, at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21876 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92-1-1-000 and TM92-1-1-000]

Alabama-Tennessee Natural Gas Co., Proposed PGA Rate Adjustment

September 5, 1991.

Take notice that on September 3, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Twenty Seventh Revised Sheet No. 4
Third Revised Sheet No. 4B

The tariff sheets are proposed to become effective October 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers. Alabama-Tennessee further states that it is adjusting its rates to reflect the Commission's Annual Charge Adjustment (ACA) effective on October 1, 1991.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 or Rule 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 September 12, 1991. 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 to the proceeding 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. 91-21877 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket RP89-251-016 and TA90-1-1-012]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 6, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on August 30, 1991 tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1, in order to conform its tariff with the Settlement approved by the Commission in various orders issued in this proceeding. Alabama-Tennessee states that it is implementing the Settlement at this time, the parties having achieved a satisfactory resolution of the final outstanding issue which remained under the Settlement involving the procedures for implementing § 3.3 of the General Terms and Conditions of Alabama-Tennessee's FERC Gas Tariff. Alabama-Tennessee proposes an effective date of September 1, 1991 for these tariff sheets.

Tennessee states that copies of the filing were served upon Tennessee's jurisdictional customers and interested public bodies and all persons on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21878 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that ANR Pipeline Company ("ANR") on September 3, 1991, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective October 1, 1991:

Original Volume No. 1
Forty-Fifth Revised Sheet No. 18
Original Volume No. 1-A
Ninth Revised Sheet No. 6
Original Volume No. 2
Tenth Revised Sheet No. 16
Tenth Revised Sheet No. 17
Tenth Revised Sheet No. 18
Tenth Revised Sheet No. 19
Twelfth Revised Sheet No. 20
Eleventh Revised Sheet No. 21
Sixth Revised Sheet No. 22
Original Volume No. 3
Third Revised Sheet No. 5

ANR states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment ("ACA") rate as permitted by section 17 of its Volume No. 1 Tariff. The revised tariff sheets reflect an ACA rate of $0.0024.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before September 12, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21879 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

September 5, 1991.

Take notice that on August 30, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective October 1, 1991:

Rate Schedule No. X-26
Original Volume No. 3
Fourteenth Revised Sheet No. 185.1
Rate Schedule No. G-2
Second Revised Volume No. 1
Sixth Revised Sheet No. 11
Rate Schedule No. CD
Second Revised Volume No. 1
Sixth Revised Sheet No. 16

These tariff sheets reflect AER's second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1991 under the Commission's Order Nos. 483 and 483-A.

The proposed changes reflect a decrease in AER's system cost of

$172,215 and would decrease its revenue from jurisdictional sales and service by $1,244 for the PGA period of October, November and December 1991 as adjusted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21880 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that CNG Transmission Corporation ("CNG") on August 30, 1991, pursuant to § 154.38(d)(6) of the Federal Energy Regulatory Commission's Regulations that provide for the Annual Charge Adjustment and section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets with a proposed effective date of October 1, 1991:

First Revised Volume No. 1:
- Eleventh Revised Sheet No. 31
- Fifth Revised Sheet No. 32
- Sixth Revised Sheet No. 34
- Third Revised Sheet No. 35

Original Volume No. 2
- Fourth Revised Sheet Nos. 250 and 290

Original Volume No. 2A
- Fourth Revised Sheet Nos. 18, 28, 35, 48, and 87

The proposed tariff sheets reflect a new ACA unit rate of 0.23 cents per Dt.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before September 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21881 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-1-2-000 and TM92-1-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 5, 1991.

Take notice that on August 30, 1991, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies each of Tenth Revised Sheet Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1991.

The purpose of the revisions to Tenth Revised Sheet Nos. 4 and 5 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of October 1991—December 1991 pursuant to section 21 of the General Terms and Conditions of east Tennessee's Tariff and to reflect the new Annual Charge Adjustment (ACA) that is shown on the Tenth Revised Sheet No. 4 and No. 5 to be effective October 1, 1991. The new ACA rate is $.0023 compared to $.0021 previously.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 12, 1991. 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21882 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 6, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 29, 1991 certain revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is November 1, 1991.

ESNG states the filing is its Annual PGA filing pursuant to § 154.305 of the Commission's regulations and section 21 of its FERC Gas Tariff, First Revised Volume No. 1. The effect of the filing is to increase commodity rates by $0.7191 per dt and no change in the demand rates over ESNG's rates established in its Quarterly PGA filing, Docket No. TQ91-3-23-000 et. al., effective August 1, 1991. Other rates also change correspondingly.

ESNG states that the projected commodity and demand costs have been developed using a best estimate of available gas supply to meet its anticipated purchase requirements. Such projections reflect the continued implementation of ESNG's Stipulation and Agreement in Docket Nos. RP89-164-000 and 001, and more specifically Article II (as amended) thereof, which permits ESNG to include in its PGA calculations transportation-related (Account No. 858) costs.

ESNG states its filing also contains the calculations of its new surcharge adjustments which reflect the amortization of the respective commodity and demand current deferral balances accumulated during the period July 1, 1990 through June 30, 1991 over the twelve month period commencing November 1, 1991.

ESNG states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC

20426, in accordance with Rule 211 and Rule 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 September 26, 1991. 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. 91-21883 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-33-000]

El Paso Natural Gas Co.; Tariff Filing

September 5, 1991.

Take notice that on August 30, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Cost Recovery mechanism for interest in accordance with sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively; and

(ii) A revision in the Annual Charge Adjustment ("ACA") in accordance with sections 21 and 23, Annual Charge Adjustment Provision, contained in the General Terms and Conditions in El Paso's FERC Gas Tariffs, First Revised Volume No. 1-A and Second Revised Volume No. 1, respectively.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized, as set forth in El Paso's filing made May 31, 1991 at Docket No. RP91-162-000. The only adjustments proposed by the filing are being made pursuant to §§ 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payments, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.2272 per dth to $0.2217 per dth.

In addition, El Paso states that the proposed tariff sheets reflect an ACA charge of $0.0023 per dth to be collected for the fiscal year beginning October 1, 1991. This represents an increase of $0.0002 per dth in the ACA charge currently being charged.

El Paso respectfully requested that the tendered tariff sheets be accepted and permitted to become effective on October 1, 1991, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21884 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-188-002]

El Paso Natural Gas Co., Compliance Filing

September 6, 1991.

Take notice that on August 30, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance (i) modifications to certain rate filing statements; and (ii) certain tariff sheets contained in El Paso's Second Revised Volume No. 1, First Revised Volume No. 1-A and Third Revised Volume No. 2 FERC Gas Tariffs, in compliance with the Federal Energy Regulatory Commission's ("Commission") "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedures" ("Suspension Order") issued July 31, 1991 at Docket No. RP91-188-000.

El Paso states that ordering paragraph (F) of the Suspension Order requires El Paso to refile, within 30 days of the date of the order, to move El Paso Electric Company ("EPEC") from the New Mexico Zone to the Texas Zone for purposes of cost allocation, rate design and in the calculation of the resulting rates to EPEC. Accordingly, El Paso has reallocated and recalculated the rates affected by this change.

El Paso further states that ordering paragraph (C) of the Commission's order requires El Paso "to refile, within 30 days of the date of the order issued in this docket, Statements A to M inclusive, and O and P, to reflect El Paso's actual throughput and gas supply estimates as of March 31, 1991, adjusted for known and measurable changes through December 31, 1991, and to refile rates based on this test period to the extent they are lower than the rates initially filed in this proceeding." As directed, El Paso has developed the required actual throughput and gas supply estimates, and the result is an increase in the rates compared to those rates reflected in El Paso's initial filing. The recalculated rates were not filed or reflected on tariff sheets inasmuch as the rates are not lower than rates initially filed.

El Paso further states that in the notice of rate change, El Paso proposed an increase in the Gas Cost Cap and WACOG rates of certain sales rate schedules based on the gas costs for twelve (12) months ending December 31, 1992 which reflect changes from the base period comprised of twelve (12) consecutive months ended March 31, 1991. The Suspension Order directed El Paso to refile certain tariff sheets to reflect the use of El Paso's actual WACOG as of March 31, 1991, adjusted for known and measurable changes through December 31, 1991. Accordingly, El Paso has adjusted the Gas Cost Cap and WACOG rates.

Ordering paragraph (G) required that El Paso provide an explanation as to why the proposed non-gas unit rate is applicable only to one pricing option, the WACOG-Option, under sales Rate Schedules ABD-1 and PA-1 for exempt sales customers. The reason for application of a non-gas unit rate only to the WACOG option is a consequence of the fundamental difference between such WACOG option and all other options. Only the WACOG option is a cost-based rate which is developed using the underlying gas cost and non-gas cost incurred by El Paso in providing service under the WACOG option. Under all other pricing options established at Docket No. RP88-44-000,

et al., which are each forms of market based rather than cost-based rates, the non-gas cost is included in the total rate and need not be, nor can it be, separately identified.

In compliance with ordering paragraph (H) of the Suspension Order El Paso has filed a study showing a comparison of the proposed rates calculated with the costs and volumes associated with the facilities certificated in Docket No. CP89–1540–000 included versus rates calculated with such costs and volumes excluded.

El Paso states that copies of the filing were served upon all parties of record in Docket No. RP91–188–000 and otherwise, upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are avaialable for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21885 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–44–019]

El Paso Natural Gas Co., Compliance Filing

September 6, 1991.

Take notice that on August 30, 1991, El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act, and in compliance with the "Stipulation and Agreement in Settlement of Rate and Related Proceedings" filed August 31, 1990, as amended October 5, 1990, ("Settlement") in the referenced proceeding, tariff sheets to be included in its FERC Gas Tariff in implementation of the Settlement to become effective on September 1, 1991, except for certain Statement of Rates tariff sheets which reflect settlement rates effective from July 1, 1988 forward.

El Paso states that by order issued March 20, 1991 at Docket No. RP88–44–000, *et al.* ("Initial Order"), the Commission approved with certain modifications the proposed tariff revisions which were reflected in the *pro forma* tariff sheets attached to El Paso's Settlement. Ordering paragraph (C) of the Initial Order required El Paso to file tariff provisions and clarifications within thirty (30) days of the issuance of such order. On April 19, 1991, El Paso filed in compliance with the Initial Order. Concurrently therewith, El Paso also filed a request for rehearing concerning certain of the tariff provision changes ordered by the Commission. By order issued August 14, 1991 at Docket No. RP88–44–011, *et al.* ("Rehearing Order"), the Commission granted in part and denied in part requests for rehearing and clarification and directed El Paso to file certain revised tariff sheets within thirty (30) days of its issuance. In addition, the Rehearing order directed El Paso to file tariff sheets to implement open-access storage in accordance with the conditions set forth in the order. Such filing was made concurrently with the instant filing.

El Paso further states that the proposed tariff sheets tendered herewith incorporate the *pro forma* tariff sheets attached to the Settlement along with all of the revisions to the *pro forma* tariff sheets filed in compliance with the Initial and Rehearing Orders. Additionally, the tendered tariff sheets reflect certain miscellaneous changes in El Paso's tariff in order to accommodate and make consistent all related provisions in El Paso's tariff. Certain of these changes have been approved by the Commission since the Settlement was filed, and hence were not reflected in the *pro forma* tariff sheets attached to the Settlement. As explained it the filing, however, such changes, together with minor "housekeeping" revisions, are not inconsistent in any substantive respect with the Settlement or the Commission's order approving same, and are reflected in the tendered tariff sheets solely as a matter of convenience in order that El Paso's tariff may be brought fully up to date through a single, consolidated tariff filing. When accepted by the Commission and made effective, the tendered tariff sheets will bring El Paso's tariff into full conformance with the Commission's order approving the Settlement in this docket.

El Paso respectfully requests waiver of all applicable Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on September 1, 1991 with the exception of the Statement of Rates tariff sheets which become effective from July 1, 1988 forward.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP88–44–000 *et al.*, and otherwise upon all interstate pipeline system sales customers and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21886 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–5–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that on August 30, 1991 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective September 1, 1991:

Second Revised Twentieth Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Quarterly PGA filing effective August 1, 1991 in Docket No. TQ91–4–34–000.

On June 28, 1991, FGT filed in its Quarterly PGA filing in Docket No. TQ91–4–34–000 a projected cost of purchased gas for the period August 1, 1991 through October 31, 1991 of $2.0192/MMBtu saturated. Subsequent to the Quarterly filing, FGT has experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Quarterly PGA. However, FGT is precluded from adjusting its rates under §15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its last Quarterly PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in

its cost of purchased gas to a level of $2.1432/MMBtu saturated.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before September 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

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

Lois D. Cashell,

Secretary.

[FR Doc. 91-21887 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-187-003 and CP91-2448-001]

Florida Gas Transmission Co.; Compliance Filing

September 6, 1991

Take notice that on August 30, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet:

2nd Substitute First Revised Sheet No. 51

FGT states that by Commission Order issued July 31, 1991 in the above-referenced dockets, the Commission accepted and suspended for the full five-month suspension period, subject to refund, and further subject to certain conditions, tariff sheets filed by FGT on July 1, 1991 pursuant to section 4 of the Natural Gas Act to implement a general rate increase and changes in rates, terms, and conditions applicable to FGT's services.

In compliance with ordering paragraph (E) of the July 31 Order, FGT submitted an explanation setting out the basis for eliminating Rate Schedules FTS-OCS and ITS-OCS and submitted a list identifying the shippers under those rate schedules. FGT also submitted 2nd Substitute First Revised Sheet No. 51 to correct a typographical error. The revised tariff sheet includes the words "the sum of" which were inadvertently omitted from the description of the demand charge applicable to Rate Schedule SGS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21888 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-95-000]

Green Canyon Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that Green Canyon Pipe Line Company (Green Canyon) tendered for filing on August 30, 1991 certain original and revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1991.

The purpose of the filing is to (1) establish pursuant to Order No. 472, a new Article 3.7 in Rate Schedules FT-GC and IT-GC contained in Original Volume No. 1 of Green Canyon's FERC Gas Tariff which Article will provide for an Annual Charge Adjustment (ACA) Provision to permit Green Canyon to recover from its transportation customers the annual charges assessed against Green Canyon by the Commission and (2) establish the initial ACA charge of $0.0021 per dt (Commission approved unit rate of $0.0022 per Mcf converted to dt) in the commodity portion of Green Canyon's transportation rates.

Green Canyon states that copies of the filing are being mailed to each of its Shippers for whom transportation service is being provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21889 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-1-5-000 & TM92-1-5-000]

Midwest Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 5, 1991.

Take notice that on August 30, 1991, Midwestern Gas Transmission Company (Midwestern) filed Thirtieth Revised Sheet No. 5 and Twenty-fifth Revised Sheet No. 6 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1991.

Midwestern states that the purpose of this filing is to reflect a quarterly PGA rate adjustment to its sales rates for the period October 1991 through December 1991. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 consist of a $.9889 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $.01 per dekatherm adjustment applicable to the demand component. In addition, Midwestern has redetermined the Annual Charge Adjustment pursuant to Article XIX of the General Terms and Conditions of Midwestern's Tariff resulting in a new charge of $0.0023 per dekatherm.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 12, 1991. 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21890 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-47-001]

MIGC, Inc.; Compliance Filing

September 6, 1991.

Take notice that on August 30, 1991, MIGC, Inc. (MIGC) tendered for filing Substitute Sixty-First Revised Sheet No. 32 to MIGC's FERC Gas Tariff, Original Volume No. 1. This tariff sheet, which was submitted to correct certain errors contained in MIGC's August 23, 1991 ACA Charge tariff filing, is proposed to become effective October 1, 1991.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1991.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21891 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-1-16-000 and TM92-1-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that on August 30, 1991, National Fuel Gas Supply Corporation ("National") submits for filing, as part of its FERC as Tariff, the following revised tariff sheets:

Second Revised Volume No. 1

Item A: Fourteenth Revised Sheet No. 5
Item B: Third Revised Sheet No. 6

First Revised Volume No. 2

Item C: Substitute First Revised Sheet No. 796
Second Substitute Second Revised Sheet No. 857

The proposed effective date of the revised tariff sheets in Item A & B is October 1, 1991. Substitute First Revised Sheet No. 796 and Second Substitute Second Revised Sheet No. 857 are proposed to become effective November 1, 1990 and July 9, 1991 respectively.

National states that the purpose of the revisions in Item A is to reflect a quarterly Purchased Gas Adjustment ("PGA"). Fourteenth Revised Sheet No. 5 results in a 14.42 cents per dekatherm ("Dt") increase in its commodity gas cost in comparison with National's compliance filing on July 19, 1991, in Docket Nos. TQ91-3-16-001 *et al.* The revised RQ and CD sales commodity rate of 272.80 cents per Dt is based upon a current average cost of purchased gas of 252.13 cents per Dt (in unit of purchases), or 258.32 cents per Dt (in unit of sales).

National states that the purpose of the revisions in Item B is to reflect the change of FERC Annual Charge in Rate Schedules FT and IT.

National notes that the purpose of the revisions in Item C is to include in Rate Schedules X-54 and X-57, the ACA clause which was inadvertently omitted in filings made by National on July 12, 1991 and July 18, 1991 in Docket Nos. CP88-194-003 and RP91-193 respectively. The ACA clause for both Rate Schedules was originally approved by a FERC Letter Order dated September 27, 1990 in Docket Nos. TQ91-1-16 and TM91-1-16.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Deleware, Massachusetts and New Jersey.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.215 or 385.211). All such motions to intervene or protests should be filed on or before September 12, 1991. 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. 91-21892 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-59-000, TM92-1-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that Northern Natural Gas Company, (Northern), on August 30, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff), with a proposed effective date of October 1, 1991.

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.6965 per MMBtu to be effective October 1, 1991, through December 31, 1991. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Demand rate component of $4.954 per MMBtu. This rate will be effective October 1, 1991 through December 31, 1991.

Northern states that copies of the filing were served on Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. Protests will be considered by the Commission in determining the appropriate 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21893 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-7-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that Northern Natural Gas Company (Northern), on August 30, 1991 tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.6365 per MMBtu to be effective September 1 through September 30, 1991.

Northern states that copies of the filing were served on Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. Protest 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21894 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

Northwest Pipeline Corp.; Change in Service Agreements

[Docket No. CP89-1525-003, CP90-870-000]

September 6, 1991.

Take notice that on August 16, 1991 Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets, to be part of its FERC Gas Tariff:

Second Revised Volume No. 1

First Revised Sheet No. 32
First Revised Sheet No. 36
First Revised Sheet No. 84
Second Revised Sheet No. 94
Second Revised Sheet No. 300
Third Revised Sheet No. 300
Second Revised Sheet No. 301
Third Revised Sheet No. 301
Second Revised Sheet No. 302
Third Revised Sheet No. 302
Original Sheet No. 305

First Revised Volume No. 1-A

Second Revised Sheet No. 601
Second Revised Sheet No. 602

Northwest states that the purpose of this filing is to comply with the Commission's order in the above docket number, authorizing a new Jackson Prairie meter station and changes in storage service volumes, and to update its Indexes of Purchasers and Shippers. Northwest has also submitted the following:

Northwest has requested various effective dates for the tariff sheets to correspond to the effective dates of the Service Agreements under Rate Schedules SGS-1, SGS-2F, and SGS-2I.

Northwest states that a copy of the filing is being served on all persons listed on the official service list in the above-referenced dockets, and on Northwest's list of jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21895 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM92-1-37-000 & TQ92-1-37-000]

Northwest Pipeline Corp.; Proposed Changes in Sales Rates Pursuant to Purchased Gas Cost Adjustment

September 6, 1991.

Take notice that on August 30, 1991, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, Second Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending December 31, 1991.

The current PGA adjustment for which notice is given herein, aggregates to an increase of 29.09¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the fourth quarter of 1991 would increase sales revenues by approximately $3,055,905. The instant filing also provides for a decrease in the demand components of Northwest's gas sales rates to reflect changes to the estimates of Canadian demand rates and to reflect a revised Canadian exchange rate factor. The current PGA adjustment is reflected on Sheet Nos. 10 and 11 below, while all tariff sheets listed herein reflect the Commission approved revised ACA surcharge of .24¢ per MMBtu, effective October 1, 1991.

Northwest hereby tenders the following tariff sheets to be effective October 1, 1991:

Second Revised Volume No. 1

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 11
Seventh Revised Sheet No. 13
Seventh Revised Sheet No. 201
Twenty-Fourth Revised Sheet No. 2.3
Twenty-Third Revised Sheet No. 2-B

Northwest states that copies of the filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21896 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-37-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 6, 1991.

Take notice that on August 30, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Thirteenth Revised Sheet No. 10
Thirteenth Revised Sheet No. 11
Eighth Revised Sheet No. 13

First Revised Volume No. 1-A

Eighth Revised Sheet No. 201

Original Volume No. 2

Twenty-Fifth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective October 1, 1991, to reflect (1) interest applicable to July, August and September 1991, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.74¢ per MMBtu for the three months commencing October 1, 1991.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1991. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21897 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 5, 1991.

Take notice that on August 30, 1991 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in appendix No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in appendix No. 2.

Panhandle states that these revised tariff sheets are being submitted in accordance with section 20 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC gas Tariff, Original Volume No. 1. The Commission has changed the unit rate of the Annual Charge Adjustment Clause (ACA) to be applied to rates for recovery of 1991 Annual Charges pursuant to Order No. 472 in Docket No. RM87-3-000. The surcharge attributable to fiscal year 1991 program costs is $0.0024 per Mcf ($0.0023 per Dt to reflect Panhandle's billing unit) of natural gas sold or transported.

The proposed effective date of the above-referenced tariff sheets is October 1, 1991.

Panhandle respectfully requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith, to become effective October 1, 1991, as previously described.

Panhandle states that copies of the letter and enclosures are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21898 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-6-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1 with a proposed effective date of October 1, 1991:

Thirty-Fourth Revised Sheet No. 4A
Eleventh Revised Sheet No. 4-A1
Tenth Revised Sheet No. 4-A2

Sea Robin states that the proposed tariff sheets have been revised to reflect the Commission's change in the ACA charge from .22¢ per Mcf effective October 1, 1991 pursuant to section 6 of Sea Robin's tariff and § 154.38(d)(6) of the Commission's Regulations.

Sea Robin states that copies of the filing were served upon all of its shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21899 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA90-19-000]

Southern Energy Co.; Informal Settlement Conference

September 6, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 1, 1991, at 9 a.m., at the offices of the Federal

Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above captioned proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214 (1991).

For additional information, contact Sandra J. Delude at (202) 208–2161 or Besty R. Carr at (202) 208–1240.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21900 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–1–7–000, TM92–1–7–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 5, 1991.

Take notice that on August 30, 1991, Southern Natural Gas Company (Southern) tendered for filling the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Seventh Revised Sheet No. 4A
Twentieth Revised Sheet No. 4B
Twenty Sixth Revised Sheet No. 4J
Seventh Revised Sheet No. 45M

The proposed tariff sheets and supporting information are being filed with proposed effective date of October 1, 1991. The aforesaid tariff sheets reflect a increase of 41¢ per Mcf at 1,000 Btu in the commodity component of Southern's rates from its last scheduled PGA filing, Docket No. TQ91–3–7–000, and reductions in Southern's demand rates for Zones 1, 2, and 3 of 13¢, 44¢, and 45¢ per Mcf at 1,000 Btu, respectively, as a result of projected changes in Southern's cost of purchased gas. Additionally, the aforesaid tariff sheets implement the Commission's revised annual charge adjustment of .24¢ per Mcf or .23¢ per MMBtu, as converted to a thermal basis.

Southern states that copies of the filing were served all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21901 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–1–9–000, TM92–1–9–000]

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 5, 1991.

Take notice that on August 30, 1991, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff to be effective October 1, 1991:

Item A: *Third Revised Volume No. 1*

First Revised Fifth Revised Sheet No. 20
First Revised Fifth Revised Sheet No. 21
First Revised Fifth Revised Sheet No. 22
First Revised Third Revised Sheet No. 23
First Revised Second Revised Sheet No. 24
First Revised Third Revised Sheet No. 25
First Revised Third Revised Sheet No. 26

Item B: *Original Volume No. 2*

First Revised Twenty-Fourth Revised Sheet No. 5
First Revised Twenty-Third Revised Sheet No. 6
Second Revised Twelfth Revised Sheet No. 10

Tennessee states that the current Purchased Gas Cost Rate Adjustments reflected on Sheet Nos. 20 through 22 consist of a $.0079 per dekatherm adjustment applicable to the gas component of Tennessee's sales rates and a $.01 per dekatherm adjustment applicable to the Demand D1 component.

The proposed rates also include an adjustment to the ACA charge of $.0002 to $.0023 per Dth. Pursuant to Order 472, the Commission established a uniform industry-wide ACA unit rate of $.0024 per Mcf (.0023 per Dth on Tennessee) for the fiscal year beginning October 1, 1991.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 12, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21902 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–210–001]

Tennessee Gas Pipeline Co.; Filing

September 6, 1991.

Take notice on August 30, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheet in Third Revised Volume No. 1 of it FERC Gas Tariff to be effective on October 1, 1991:

Substitute First Revised Sheet No. 416

This filing is being made to correct typographical errors in the above mentioned tariff sheet filed August 20, 1991, as requested by Staff.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–21903 Filed 9–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 5, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 30, 1991 First Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. Such tariff sheet is proposed to be effective October 1, 1991.

Transco states that the purpose of the filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Transco's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed Transco its ACA unit rate of $0.0024/Mcf ($0.0023/dt on Transco's system) for the annual period commencing October 1, 1991.

Transco states that copies of the filing are being mailed to each of its customers and State Commissions.

In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

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 18 CFR 385.214 and 385.211 Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21904 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-30-000]

Trunkline Gas Co.; Change in Tariff

September 5, 1991.

Take notice that on August 30, 1991 Trunkline Gas Company (Trunkline) tendered for filing revised sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in appendix No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in appendix No. 2.

The proposed effective date of these revised tariff sheets is October 1, 1991.

Trunkline states that the above-referenced tariff sheets are being filed in accordance with Commission Order No. 472 and pursuant to section 20 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1. Trunkline states that this filing reflects an ACA unit surcharge of $0.0023 per Dt to become effective October 1, 1991.

Trunkline states that copies of the letter and enclosures were served all on all customers subject to the tariff sheets and applicable state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21905 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-82-000 and TM92-1-82-000]

Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 6, 1991.

Take notice that on August 30, 1991, Viking Gas Transmission Company (Viking) filed the following revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff:

To be effective November 1, 1991

Original Volume No. 1

Sixteenth Revised Sheet No. 6
Sixth Revised Sheet No. 11
Third Revised Sheet No. 66
Third Revised Sheet No. 74

Original Volume No. 2

Fourth Revised Sheet No. 55
Third Revised Sheet No. 72
Second Revised Sheet No. 114

Viking states that the purpose of the revisions on Sixteenth Revised Sheet No. 6 is to institute the Annual PGA pursuant to Article XVII, and the Annual Charge Adjustment pursuant to Article XX, of the General Terms and Conditions of Viking's Tariff.

Viking states that the purpose of the revisions on Sixth Revised Sheet No. 11, Third Revised Sheet No. 66 and Third Revised Sheet No. 74 of Original Volume No. 1 and Fourth Revised Sheet No. 55, Third Revised Sheet No. 72, and Second Revised Sheet No. 114 of Original Volume No. 2 is to reflect the changes in the fuel and use retention percentages applicable to sales and transportation services.

Viking states that the Current Purchased Gas Cost Rate Adjustments reflected on Sixteenth Revised Sheet No. 6 consist of a ($1.0694) per dekatherm adjustment to the gas rate, a $.4775 per dekatherm adjustment to the Rate Schedule SR-1 commodity rate, and a $5.81 per dekatherm adjustment to the demand rates.

Viking states that the revisions also reflect a $.2697 per dekatherm surcharge adjustment to the gas rates and a $1.25 per dekatherm adjustment to the demand rates for amortizing the Unrecovered Gas Cost Account.

Viking also states that the redetermined Annual Charge Adjustment is $.0024 per dekatherm.

Viking also requests that the Commission grant Viking a waiver of § 154.305(b)(3) of the Commission's Regulations. Viking states that a waiver is warranted because the policy underlying that regulation—the need to ensure that Canadian gas and domestic gas compete on an equal basis—is inapplicable to Viking whose customers purchase only Canadian gas. Viking states that the application of that regulation to Viking has the unintended effect of distorting the competition between sales and transportation of Canadian gas on its system. Viking states that waiver of the regulation is necessary to allow Viking to flowthrough the costs of its purchases from TransCanada PipeLines, Ltd. on an as-billed basis so that it can compete on a fair basis against spot gas sales.

Viking also requests that the Commission give its approval, to the extent necessary, to allow Viking to fully recover its purchased gas costs despite the fact that Viking did not satisfy the past performance assessment test. Viking states that, with respect to the first test interval, the assessment test should not apply to prevent the

recovery of purchased gas costs when Viking actually overrecovered its gas costs during that test interval and that, in any event, Viking's failure to satisfy the assessment test is justified. Viking states that its failure to meet the assessment test during the third test interval is likewise justified.

Viking states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 20, 1991. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21908 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-030]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 6, 1991.

Take notice that Williams Natural Gas Company (WNG) on August 28, 1991, tendered for filing First Revised Sheet No. 115, Second Revised Sheet Nos. 116 and 117 and First Revised Sheet No. 124 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of these tariff sheets is October 1, 1991.

WNG states that this filing is being made in compliance with Commission Order Granting Rehearing issued August 13, 1991 in Docket No. RP89-183-028, which directed WNG to file revised tariff sheets to allow firm LDC shippers to "bump" interruptible shippers from receipt points mid-month.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 13, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21906 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-213-000]

Williston Basin Interstate Pipeline Company v. K N Energy, Inc.; Complaint

September 6, 1991.

Take notice that on August 29, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), pursuant to rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 filed a complaint against K N Energy Company, Inc. (K N) requesting the Commission to direct K N to pay for service received under the terms and conditions of two firm transportation agreements entered into between Williston Basin and K N consistent with Williston Basin's FERC Rate Schedule F-1 for the periods November 1, 1989 through March 31, 1990 and May 3, 1991 through March 31, 1992.

Williston Basin states that on June 30, 1989, Williston Basin as transporter and K N as shipper entered into a transportation agreement under Williston Basin's FERC Rate Schedule F-1 for firm transportation service during the period November 1, 1989 through March 31, 1990. Williston Basin notes that amendments to the level of service to be provided were executed on August 17, 1989, and September 28, 1989.

Williston Basin argues that K N was obligated to pay a monthly reservation charge for the five months of service. Williston goes on to argue that K N has not paid any of the reservation charges. Williston Basin states that through August 31, 1991, the charges total $517,566.23 (net of the $10,000 prepayment), including late payment charges of $70,976.83.

Williston Basin requests that the Commission direct K N to make payment of reservation charges in arrears, plus appropriate interest and costs, and to direct K N to pay all charges due under the May 3, 1991 agreement as they become due and payable.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before October 7, 1991. 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. Answers to this complaint shall be due on or before October 7, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21907 Filed 9-11-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-18; Certification Notice—86]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new

electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Northern Consolidated Power, Inc., Houston, TX	08-29-91	Topping cycle	84	North East, PA

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC, on September 5, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-21989 Filed 9-11-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $177,813.96, plus accrued interest, in alleged crude oil overcharge funds obtained from Corum Energy, Case No. LEF-0017, and Davis & Forbes, Case No. LEF-0021. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than June 30, 1992, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director; Anthony Swisher, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Swisher).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 305.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Corum Energy and Davis & Forbes. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of crude oil and refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than June 30, 1992. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

Dated: September 6, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Names of Firms: Corum Energy, Davis & Forbes.

Dates of Filing: July 17, 1990, July 19, 1990.

Case Numbers: LEF-0017, LEF-0021.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers two Petitions for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The first petition deals with monies obtained from Corum Energy (Corum) (Case No. LEF-1107). Corum remitted $10,182.06 to the DOE pursuant to a January 3, 1990 Consent Order entered into by Corum and the DOE. This Consent Order resolved allegations that Corum committed violations of the federal petroleum price and allocation regulations during the period February 26, 1980, through January 27, 1981 (Consent Order number 6AOX0032W). The second petition concerns monies received from Davis & Forbes (D&F) (Case No. LEF-0021). D&F remitted $167,631.90 pursuant to a June 22, 1988 Agreed Judgment between D&F and the DOE settling all claims that D&F had violated the federal petroleum price and allocation regulations during the period September 1, 1973, through April 30, 1978 (Agreed Judgment number 610C00405). Together, Corum and D&F remitted a total of $177,813.96 to the DOE. This Decision and Order establishes procedures for the distribution of these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual

or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds. See *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement subpart V procedures with respect to the monies received from Corum and D&F and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378, 3 Fed. Energy Guidelines ¶ 26,614 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see *e.g., New York Petroleum, Inc.,* 18 DOE ¶ 85,435 (1988); *Shell Oil Co.,* 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp,* 17 DOE ¶ 85,079 (1988) (Allerkamp), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the court issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation,* 671 F. Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumption in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. No. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation,* 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Decision and Order

On February 26, 1991, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Corum and D&F. The OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. The OHA has received no comments concerning the PD&O.

III. The Refund Procedures

A. Refund Claims

We have concluded that the alleged crude oil violation amount of $177,813.96 in principal, plus accrued interest, covered by this Decision should be distributed in accordance with the crude oil refund procedures previously discussed. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts or $35,562.79 in principal, plus accrued interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.,* 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil

cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. See *A. Tarricone, Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See *New York Petroleum, Inc.*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of Kansas, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($177,813.96) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000008798 per gallon for the two proceedings involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[1]

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. See *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988, was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989, was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). A March 31, 1991 deadline for filing an application for refund from the third pool of funds was set in *Cibro Sales Corp. Inc.*, 20 DOE ¶ 85,036 (1990). A June 30, 1992 deadline for filing an application for refund from the fourth pool of funds was set in *Quintana Energy Corporation*, 21 DOE ¶ 85,032 (1991). The volumetric refund amount from the fourth pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number; an indication whether the applicant is a corporation; the name and telephone number of a person to contact for any additional information; and the name and address of the person who should receive the refund check.

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names.

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm.

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim.

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes.

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Stripper Well Agreement).

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers).

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need hot use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

[1] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sales of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. See *Amber Refining Inc.*, 13 DOE ¶ 85,217, at 88,564 (1985).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision or $142,251.17 in principle, plus accrued interest, shoud be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $71,125.59 into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursement to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Corum Energy and Davis & Forbes pursuant to the Consent Order executed on January 3, 1990, and the Agreed Judgment executed on June 22, 1988 respectively, may now be filed.

(2) All applications submitted pursuant to paragraph (1) must be postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5), and (6) below, all of the funds from the subaccounts denominated "Corum Energy," Account Number 6AOX0032W and "Davis & Forbes," Account Number 610C00405.

(4) The Director of Special Accounts and Payroll shall transfer $71,125.59 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in Paragraph (4) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $35,562.79 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: September 6, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-21990 Filed 9-11-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3995-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title

Data Acquisition for the Registration of Pesticide Products (EPA ICR No.: 1503.01). The original request was published in the Federal Register on 4/18/91. The EPA withdrew the ICR from the public docket on 7/5/91. This is a resubmission with changes.

Abstract

Under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registrants are required to report to EPA and keep records of data from studies relative to the pesticides which are currently registered under FIFRA. Registrants, upon request, must submit to EPA reports of additional data necessary to maintain a current registration of pesticides. The Agency uses the information to assess whether the subject pesticide causes an unreasonable adverse effect on human health and the environment and to determine whether to maintain the registration.

Burden Statement

The burden for this collection of information is estimated to average 6,107 hours per response for reporting, and 1 hour per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Registrants.

Estimated No. of Respondents: 38.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 232,103 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20406; and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 5, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-21972 Filed 9-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3995-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title

Land Disposal Restrictions Variances—"No-Migration" Variances. (EPA No. 1353; OMB No. 2050–0062). This ICR is a partial reinstatement of a previously approved collection for which approval has expired.

Abstract

Section 3004 of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, prohibits land disposal of hazardous wastes beyond specified dates unless the owner/operator of a hazardous waste storage or disposal facility demonstrates to the Administrator of EPA that there will be no migration of hazardous constituents from the land disposal unit for as long as the waste remains hazardous. The regulated community can petition for a variance from statutory prohibitions or treatment requirements promulgated under section 3004, to continue land disposal of specific hazardous wastes at specific facilities. The requirements for obtaining these variances and the associated costs are discussed in detail in the document.

The Permits and State Programs Division, Office of Solid Waste, will review the petitions and determine if they successfully demonstrate "no migration". Granting a variance will be based upon successful demonstration that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. The statutory requirement for an application by an interested person is intended to place the burden on the applicant to prove that a specified waste can be contained safely in a particular type of disposal unit. According to sections 3004 (d), (e), and (g), petitioners must demonstrate to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents beyond the disposal unit for as long as the wastes remain hazardous.

Burden Statement

The respondent burden for the no-migration petition is estimated to be 2,200 hours for each facility planning to request a variance.

Respondents: Owners/Operators of Hazardous Waste Storage or Disposal Facilities.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22,000 hours.

Frequency of Collection: As needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460, and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: September 6, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–21973 Filed 9–11–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Docket No. 91–34]

Hanjin Shipping Company, Ltd. v. International Commodities Export Corporation; Filing of Complaint and Assignment

Notice is given that a complaint filed by Hanjin Shipping Company, Ltd. ("Complainant") against International Commodities Export Corporation ("Respondent") was served September 6, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complaint's applicable tariff.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon 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 this matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September 7, 1992, and the final decision of the Commission shall be issued by January 5, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91–21865 Filed 9–11–91 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

M.A.M. Intercontinental and Overseas Services, Inc. dba Red Sea Shipping Company, 5405 Garden Grove Blvd. suite 111, Westminister, CA 92683, Officers:Mohamed N. Anwar, President/Director, Mamdouh E. Aboushousha, Secretary/Director.

Freight Forwarding Express, 626 South Brick Road, Columbia, SC 29223, Barbara C. Graham, Sole Proprietor.

International Freight Services, Inc., 611 North Rt. 83, Bensenville, IL 60106, Officers: Robert A. Roubitchek, President/Treasurer, Lawrence J. McCann, Chief Exec. Officer/Vice Pres./Secretary.

Metro Forwarding, Inc., 8600 SW 161 Terrace, Miami, FL 33157, Officers: Carlos A. Sanchez, President, Lino de la Hera, Vice President, Lino R. de la Hera, Stockholder.

Carpe Air & Sea Shipping Inc., 321 Commercial Avenue, Palisades Park, NJ 07650, Officer: Barbara A. Carpe, President.

American World Cargo Inc., 66 Reade Street, New York, NY 10007, Officers: Michael G. Fuchs, President/Director, Martine S. Fuchs, Secretary/ Treasurer/Director.

E & B International Inc., 10855 Warwick Blvd., Newport News, VA 23601, Officers: Donald R. Thompson, President/ Treasurer, Roger A. Williams, Vice President/ Secretary.

Queirolo U.S.A. Inc., 153–63 Rockaway Boulevard, Jamaica, NY 11434, Officers: Michele Lupo, President/ Director, Fabio Domenichini, Vice President.

Overseas Transport Company, 5127 Hawthorn Lane, Lisle, IL 60532, Margaret V. Munoz, Sole Proprietor.

Bechtrans International Inc., 748 S. Glasgow Avenue, Inglewood, CA 90301, Officers: Tarek Hassim, President, Chris O'Shea, Vice President, Elizabeth Louise Smith, Assist. Secretary.

Dated: September 4, 1991.

By the Federal Maritime Commission.

[FR Doc. 91-21867 Filed 9-11-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1093R
Name: Smith & Kelly International Corporation dba American Freight Forwarders & Custom House Brokers
Address: c/o The EMBA Group, Inc., P.O. Box 1366 Savannah, GA 31402
Date Revoked: July 5, 1991
Reason: Surrendered license voluntarily.

License Number: 1205
Name: Airline Expediters Corporation
Address: 3738 W. Century Blvd., #3, Inglewood, CA 90303
Date Revoked: July 19, 1991
Reason: Surrendered license voluntarily.

License Number: 2110
Name: Master-Shipping Corp.
Address: 3690 N.W., 52nd Street, Miami, FL 33142
Date Revoked: August 11, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 3123
Name: Frank Tao-Ching Shu dba Safeway Transport Company
Address: 1601 W. Edgar Rd., Bldg. A, Linden, NJ 07036
Date Revoked: August 20, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 3372.
Name: Traffic Services International, Inc.
Address: 4221 W. Spruce Street, Tampa, FL 33607
Date Revoked: August 23, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 2394R
Name: Wilbur J. Reine dba Samoa Transfer & Storage
Address: P.O. Box 1026, Pago Pago, American Samoa 96799
Date Revoked: August 24, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 2994
Name: B.P. Mata & Co. (U.S.A.), Inc.
Address: 1411 W. 15th Street, Long Beach, CA 90813
Date Revoked: August 29, 1991
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 91-21866 Filed 9-11-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ames National Corporation, 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 October 3, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ames National Corporation, Ames, Iowa; to acquire 100 percent of the voting shares of Boone Bank and Trust Company, Boone, Iowa, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Old National Bancshares, Inc., Centralia, Illinois, and thereby indirectly acquire Old National Bank of Centralia, Centralia, Illinois, and Farmers and Merchants Bank of Carlyle, Carlyle, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Holding Company of Park River, Inc., Park River, North Dakota; to acquire 100 percent of the voting shares of Security State Bank of Adams, Adams, North Dakota.

2. The First National Bank at St. James Employee Stock Ownership Plan and Trust, St. James, Minnesota; to acquire 29.75 percent of the voting shares of The First National Agency at St. James, Inc., St. James, Minnesota, and thereby indirectly acquire The First National Bank at St. James, St. James, Minnesota.

3. Linton Bancshares, Inc., Bismarck, North Dakota; to merge with Farmers and Merchants Bancshares, Inc., Beach, North Dakota, and thereby indirectly acquire Farmers and Merchants Bank of Beach, Beach, North Dakota.

4. State Bank of Lake Elmo Employee Stock Ownership Plan, Lake Elmo, Minnesota, and Lake Elmo Bank Profit Sharing Plan and the Lake Elmo Bank Profit Sharing Trust, Lake Elmo, Minnesota; to acquire 4.83 percent of the voting shares of Lake Elmo Bank, Lake Elmo, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Financial Corp. of Idabel, Idabel, Oklahoma; to become a bank holding company by acquiring 99.5 percent of the voting shares of First State Bank, Idabel, Oklahoma.

2. FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank at 84th/Pecos, N.A., Federal Heights, Colorado, in organization.

Board of Governors of the Federal Reserve System, September 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-21934 Filed 9-11-91; 8:45 am]

BILLING CODE 6210-01-F

FirstBank Holding Company Employee Stock Ownership Plan; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding

company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 October 3, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company Employee Stock Ownership Plan, Lakewood, Colorado; to become a bank holding company by acquiring 27.9 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of West Arvada, N.A., Arvada, Colorado; FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Table Mesa, N.A., Boulder, Colorado; FirstBank at Chambers/Mississippi, N.A, Aurora, Colorado; FirstBank at Buckley/Quincy, N.A., Aurora, Colorado; FirstBank at 30th/Arapahoe, N.A., Boulder, Colorado; FirstBank of Beaver Creek, N.A., Beaver Creek, Colorado; FirstBank of South Boulder, N.A., Boulder, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; Breckenridge FirstBank, N.A., Breckenridge, Colorado; FirstBank of Castle Rock, N.A., Castle Rock, Colorado; FirstBank at 9th/Corona, Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Republic Plaza, N.A., Denver, Colorado; FirstBank of Southmoor Park, N.A., Denver, Colorado; FirstBank of Edgewater, N.A., Edgewater, Colorado; FirstBank at Arapahoe/Yosemite, Englewood, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A, Jefferson County, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Westland, N.A., Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, N.A., Lakewood, Colorado; FirstBank of Green Mountain, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank Wadsworth/Coal Mine, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of North Longmont, N.A., Longmont, Colorado; FirstBank of South Longmont, N.A., Longmont, Colorado; FirstBank at Arapahoe/Holly, N.A., Littleton, Colorado; FirstBank of Minturn, Minturn, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank at 120th/Colorado, N.A., Thornton, Colorado; FirstBank of West Vail, Vail, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; and FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado.

In connection with this application, Applicant also proposes to acquire FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby engage in the sale and issuance of money orders, traveler's checks, and savings bonds pursuant to § 225.25(b)(12); and making and servicing residential mortgage loans pursuant to § 225.25(b)(1); Colorado FirstBank Life Insurance Company and thereby engage in the sale of credit related life and accident and health insurance pursuant to § 225.25(b)(8)(i); and FirstBank Data Corporation, and thereby engage in providing data processing and transmission services to third parties pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1991

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-21936 Filed 9-11-91; 8:45 am]

BILLING CODE 6210-01-F

First Southern Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 3, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire two Lexington, Kentucky, branches of the

Cumberland, F.S.B., and operate them as branches of its subsidiary, First Southern National Bank of Fayette County.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Evergreen Bancshares, Inc., Tallahassee, Florida; to establish Evergreen Federal Interim Savings Bank, Tallahassee, Florida ("Interim Bank"), to acquire certain assets and assume certain liabilities of the Tallahassee, Florida branch office of Anchor Savings Bank, FSB, Hewlett, New York, pursuant to section 4(c)(8) of the Bank Holding Company Act and the Oakar Amendment of FIRREA, and to facilitate the merger of Interim Bank with and into Evergreen's subsidiary bank, Guaranty National Bank of Tallahassee, Tallahassee, Florida.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Dakota Financial Corporation, Yankton, South Dakota; to acquire First Federal Bank, F.S.B.Beresford, South Dakota, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Beresford, Brookings, Mitchell, Parkston, Wagner and Yankton, South Dakota.

2. Montana Bancsystem, Inc., Billings, Montana; to acquire "Book of Business" of the Tillit Insurance Agency, Inc., Forsyth, Montana, and thereby engage in insurance agency activities in Forsyth, Montana, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Capital Corp., Fort Scott, Kansas; to acquire Westkan, L.P., Pleasanton, Kansas, and thereby engage in making a debt investment in a community development project pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-21935 Filed 9-11-91; 8:45 am]

BILLING CODE 6210-01-F

Madelina Longino Turner, 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 October 3, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Madelina Longino Turner, Fairburn, Georgia; to acquire 19.07 percent of the voting shares of Fairbanco Holding Company, Inc., Fairburn, Georgia, and thereby indirectly acquire Fairburn Banking Company, Fairburn, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mary Kathryn Drake, League City, Texas; to acquire an additional 0.32 percent of the voting shares of First Highland Corp., Highland, Illinois, for a total of 25.03 percent, and thereby indirectly acquire The First National Bank of Highland, Highland, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James M. Greenbaum, Palm Springs, California, to acquire 20 percent; Robert A. Silverberg, Denver, Colorado, to acquire 12.5 percent; William L. Collins, III, Alexandria, Virginia, to acquire 10 percent; Ralph H. Grills, Jr., Englewood, Colorado, to acquire 10 percent; Joseph M. Tenenbaum, Little Rock, Arkansas, to acquire 10 percent; M.R. Emrich, Palm Springs, California, to acquire 7.50 percent; Bennett Aisenberg, Denver, Colorado, to acquire 5 percent; Vincent J. Boryla, Englewood, Colorado, Trustee for Employee Pension Plan of Eagle Trace, Inc., to acquire 5 percent; Donald M. Clarke, Manhattan Beach, California, to acquire 5 percent; Alan H. Marcove, Denver, Colorado, to acquire 5 percent; Edward A. Robinson, Greenwood Village, Colorado, to acquire 2.5 percent; Jack and Hank Robinson, Denver, Colorado, General Partners, Grant Street Joint Ventures, to acquire 2.5 percent; Richard L. Robinson, Englewood, Colorado, to acquire 2.5 percent; and Maurine M. Ruddy (Emrich), Palm Springs, California, to acquire 2.5 percent of the voting shares of First Denver Corporation, Denver, Colorado, and thereby indirectly acquire First National Bank of Denver, Denver, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Robert V. Pauley, Kenwood, California; to acquire an additional 7.37 percent of the voting shares of Northern Empire Bancshares, Santa Rosa, California, and thereby indirectly acquire Sonoma National Bank, Santa Rosa, California.

Board of Governors of the Federal Reserve System, September 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-21937 Filed 9-11-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition Policy, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve a new information collection, Preparation and Submission of Subcontracting Plans. This collection will ensure that small and small disadvantaged business concerns are afforded the maximum practical opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 200; annual responses: 1; hours per response: 11.3; recordkeeping hours: N/A; total burden hours: 2,260.

FOR FURTHER INFORMATION CONTACT: Margaret Ashby, Office of GSA Acquisition Policy (202–501–1224).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91–21968 Filed 9–11–91; 8:45 am]

BILLING CODE 6820–61–M

Boston Federal Courthouse Environmental Impact Statement

AGENCY: General Services Administration.

ACTION: Notice of intent.

SUMMARY: The General Services Administration (GSA) is issuing this notice to advise the public that an Environmental Impact Statement/Commonwealth of Massachusetts Environmental Impact Report will be prepared and considered for the construction of a new federal courthouse in Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ralph A. Scalise, Senior Planner, General Services Administration, Public Buildings Service, 10 Causeway Street, Boston, MA 02222, (617) 565–5821.

SUPPLEMENTARY INFORMATION: The GSA will prepare an Environmental Impact Statement/Environmental Impact Report for the construction of a federal courthouse on a 4.6 acre parcel on Fan Pier in the Fort Point Channel section of South Boston. The proposed courthouse will contain approximately 675,000 square feet of gross space and 450,000 square feet of net occupiable space, 40,000 square feet of which will be devoted to parking space. The proposed project is being undertaken to accommodate projected space requirements of the Federal Courts.

The EIS/EIR will evaluate alternative geographic sites and the no-build alternative. The EIS/EIR will evaluate impacts on the affected environment for the following resource areas: geology and soils, biology, water quality, air quality, noise, traffic and transportation, utilities, cultural resources, land use and zoning community services and hazardous wastes. The EIS/EIR will also address consistency of the proposed action with Commonwealth of Massachusetts Coastal Zone Management Policies.

PUBLIC SCOPING MEETING: To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held on September 25, 1991, from 3 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. in the John W. McCormack Post Office Courthouse, Ceremonial Court (15th Floor), One Post Office Plaza, Boston.

Written comments may be mailed to the informational contact person no later than October 10, 1991.

Issued in New York, NY on September 3, 1991.

William J. Diamond,

Regional Administrator, GSA Region 2.

[FR Doc. 91–21971 Filed 9–11–91; 8:45 am]

BILLING CODE 6820–23–M

Federal Travel Regulation

[GSA Bulletin FTR 3]

Reimbursement of Subsistence Expenses; Oshkosh, WI

September 4, 1991.

To: Heads of Federal agencies.

Subject: Reimbursement of higher actual subsistence expenses for travel to Oshkosh (Winnebago County), Wisconsin.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin. this special rate is applicable to claims for reimbursement covering travel during the period July 21, 1991, through August 3, 1991.

2. *Background.* Federal Travel Regulation (FTR) Amendment 19 (41 CFR part 301–8), published in the **Federal Register** on August 7, 1991 (56 FR 37478), permits the Administrator of General Services to establish, upon request from the head of an agency, a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. FTR Amendment 19 essentially broadened the scope of the provisions that formerly applied only to Presidentially declared disaster areas.

3. *Maximum rate and effective date.* The Administrator of General Service, pursuant to 41 CFR part 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin for travel during the period July 21, 1991, through August 3, 1991. Agencies may approve actual subsistence expense reimbursement not to exceed $134 ($108 maximum for lodging and a $26 allowance for meals and incidental expenses) for travel to Oshkosh (Winnebago County), Wisconsin during this time period.

4. *Expiration date.* This bulletin expires on December 31, 1991.

5. *For further information contact.* Raymond F. Price, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 91–21913 Filed 9–11–91; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–39]

Availability of Draft Toxicological Profile for Fluorides

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Draft Toxicological Profile for Fluorides prepared by ATSDR for review and comment. This profile is to be included in the fourth set of 30 draft toxicological documents which profile the 36 hazardous substances that were announced in the **Federal Register** on October 16, 1990 (55 FR 41881).

DATES: To ensure consideration, comments on the draft toxicological profile must be received on or before December 16, 1991. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Send comments to the Division of Toxicology, Agency for

Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Written comments and other data submitted in response to this notice and the draft toxicological profile should bear the docket control number ATSDR–29. Send one copy of all comments and five copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Susie Tucker, Agency for Toxic Substances and Disease Registry, Division of Toxicology (E–29), 1600 Clifton Road, NE., Atlanta, Georgia 30333; Telephone: (404)–639–6001 or FTS 236–6001.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 250 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The lists were published in the **Federal Register** on April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43615); and October 17, 1990 (55 FR 42067).

Section 104(i)(3) of CERCLA outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

Although we are confident that the key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the Fluoride Profile now or in the future. CERCLA requires ATSDR to prepare (1) lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

The following draft toxicological profile is now available for public comment. The profile has undergone an additional administrative review in order to coordinate its public comment review period with the release of the Department of Health and Human Services document, Review of Fluoride: Benefits and Risks.

Document	Hazardous substance	CAS No.
1.	Fluorides	16984–48–8
	Hydrogen Fluoride	7664–39–3
	Fluorine (F)	7782–41–4

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances in compliance with the substantive and procedural requirements of section 104(i)(3) of CERCLA. As in the past, we are seeking public comments and additional information which may be used to supplement this profile. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our constituency.

Dated: September 5, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–21930 Filed 9–11–91; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

Meetings

The National Center for Environmental Health and Injury Control (NCEHIC), Centers for Disease Control (CDC), announces the following meetings:

Name: The Use of Folic Acid for the Prevention of Spina Bifida and Other Neural Tube Defects.

Times and Dates: First meeting: 8 a.m.–4 p.m., September 26, 1991. Second Meeting: 8 a.m.–4 p.m., September 27, 1991.

Place: CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333. The September 26 meeting will be held in Auditorium A and the September 27 meeting will be held in the Lobby Conference Room.

Status: Open to the public for observation and comment, limited only by space available. Both meeting rooms accommodate approximately 35 people.

Purpose: Neural tube defects are common serious birth defects in the United States and contribute substantially to worldwide infant mortality and disability. A recently completed randomized prevention trial by the British Medical Research Council (MRC) Vitamin Study Group indicated that daily oral supplementation with folic acid before conception and during pregnancy substantially reduces the risk of neural tube defects among women who have had a previously affected pregnancy. Based on these findings and other scientific evidence, on August 2, 1991, CDC released interim recommendations for supplementation with folic acid to prevent the recurrence of neural tube defects.

An invited group of qualified individuals will review the MRC findings along with other scientific evidence during the September 26 meeting. These individuals will provide CDC with their individual recommendations regarding the formulation of guidelines for the use of folic acid supplementation for the prevention of the occurrence of neural tube defects in women who have not had previously affected pregnancy.

At the September 27 meeting, in light of this new scientific evidence, a second group of invited qualified individuals will provide CDC with their individual recommendations regarding the final study design of the Randomized Controlled Trial in China of the Use of Periconceptional Vitamin Supplements to Prevent Spina Bifida and Anencephaly.

At the conclusion of each morning and afternoon session, all attendees will have an opportunity to provide oral and/or written comments for the record.

For a period of 15 days following the meetings, through October 12, 1991, the official record of the meetings will remain open in order that writ'en

comments may be submitted and be made part of the record. Comments may be mailed to the contact person listed below.

Contract Person for Additional Information: J. David Erickson, D.D.S., Ph.D., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, Mailstop F45, NCEHIC, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/488–4370 or FTS 236–4370.

Dated: September 6, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–21931 Filed 9–11–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0360]

Drug Export; Blood Grouping Reagents: Murine Monoclonal Anti–A, Anti–B, and Anti–A,B

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Organon Teknika Corp. has filed an application requesting approval for the export of the biological product Murine Monoclonal Anti–A, Anti–B, and Anti–A,B Blood Grouping Reagents to The Netherlands.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Organon Teknika Corp., 100 Akzo Ave., Durham, NC 27704, has filed an application requesting approval for the export of the biological product Murine Monoclonal Anti–A, Anti–B, and Anti–A,B Blood Grouping Reagents to The Netherlands. BCA Monoclonal Blood Grouping Reagents Anti–A, Anti–B, and Anti–A,B Blend are prepared from monoclonal antibodies secreted by murine hybridoma cell lines grown in tissue culture medium. The Anti–A, Anti–B, and Anti–A,B reagents are used for the detection of the A and B antigens and their subgroups on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on August 16, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 23, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 29, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91–21941 Filed 9–11–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0362]

Drug Export; OPUS® Anti HIV 1 + 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that PB Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product OPUS® Anti HIV 1 + 2 to Denmark, Ireland, The Netherlands, Norway, Sweden, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the Unites States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that PB Diagnostic Systems, Inc., 151 University Ave., Westwood, MA 02090, has filed an application requesting approval for the export of the biological product OPUS® Anti HIV 1 + 2 to Denmark, Ireland, The Netherlands, Norway, Sweden, and The United Kingdom. OPUS® Anti HIV 1 + 2 is an in vitro qualitative enzyme immunoassay for the detection of circulating antibodies to Human Immunodeficiency Virus, Types 1 and 2 (HIV-1 and HIV-2) in serum and plasma

of blood donors at unknown risk for HIV infection. The application was received and filed in the center for Biologics Evaluation and Research on August 23, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 23, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 30, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-21942 Filed 9-11-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0361]

Drug Export; Vironostika HIV-1 Antigen Microelisa System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: the Food and Drug Administration (FDA) is announcing that Organon Teknika Corp. has filed an application requesting approval for the export of the biological product Vironostika HIV-1 Antigen Microelisa System to The Netherlands.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Organon Teknika Corp., 100 Akzo Ave., Durham, NC 27704, has filed an application requesting approval for the export of the biological product Vironostika HIV-1 Antigen Microelisa System to The Netherlands. Vironostika HIV-1 Antigen Microelisa System is an enzyme-linked immunosorbent assay (ELISA) for the qualitative and semiquantitative detection of the p24 core antigen of Human Immunodeficiency Virus Type 1 (HIV-1) in human serum, plasma, or cell culture supernatant. The application was received and filed in the Center for Biologics Evaluation and Research on August 23, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m., and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 23, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 30, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-21943 Filed 9-11-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0324]

Goodyear Tire & Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Goodyear Tire & Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the acid-catalyzed condensation reaction product of *p*-nonylphenol, formalin, and 1-dodecanethiol as an antioxidant for adhesives and rubber articles intended for repeated use in food packaging.

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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4259) has been filed by the Goodyear Tire & Rubber Co., Akron, OH 44316-0001. The petition proposes to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of the acid-catalyzed condensation reaction product of *p*-nonylphenol, formalin, and 1-dodecanethiol as an antioxidant for adhesives, listed under 21 CFR 175.105, and rubber articles, listed under 21 CFR 177.2600, intended for repeated use in food packaging.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 30, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21944 Filed 9-11-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4333-11:NV5-91-34]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1991 Gold Coast 300 Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1991 GOLD COAST 300 race course on October 12, 1991. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, October 12, 1991, to 2400 hours, October 12, 1991, to protect persons, property, and public land resources on and adjacent to the High Desert Racing Association (HDRA) 1991 GOLD COAST 300 OHV race course. Spectators are restricted to the Start/Finish, and the high speed test section, miles 55.0 to 59.3 along the paved frontage road only.

These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1991 Gold Coast 300 OHV race course.

The following public lands restricted or closed are described as: The Sloan area, T. 23 S., R. 61 E., all of sections 31, 32, and 33; T. 23 S., R. 60 E., all of section 36. The Hidden Valley area, T. 24 S., R. 61 E., all of sections 1 through 36. The Erie area, T. 24 S., R. 60 E., all of sections 1 through 36. The Jean area, T. 25 S., R. 59 E., all of sections 1 through 36. The Jean Lake area, T. 25 S., R. 60 E., all of sections 1 through 36. The McCullough Pass area, T. 25 S., R. 61 E., all of sections 1 through 36. The Roach Lake area, T. 26 S., R. 59 E., all of sections 1 through 36. The Beer Bottle Pass area, T. 26 S., R. 60 E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: The Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 647-5000. Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated August 29, 1991.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 91-21955 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-01-4212-12; AZA 25666]

Realty Action: Exchange of Public Land; Pinal and Pima Counties, Arizona

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions of all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

(a) Pinal County

T. 9 S., R. 6 E., sec. 5.
T. 10 S., R. 6 E., sec. 30, 31.

(b) Pima County

T. 11 S., R. 6 E., secs. 3, 5, 6, 7, 10.
T. 11 S., R. 8 E., secs. 1, 3.
T. 11 S., R. 9 E., secs. 6, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 35, 36.
T. 11 S., R. 10 E., sec. 19, 20, 29, 30.
T. 12 S., R. 9 E., sec. 1.
T. 12 S., R. 10 E., secs. 6, 7, 18, 23.
T. 14 S., R. 9 E., secs. 33, 34.
T. 14 S., R. 10 E., secs. 31, 33.
T. 14 S., R. 11 E., sec. 4.
T. 15 S., R. 9 E., secs. 1, 3, 4, 9, 10, 11, 30.
T. 15 S., R. 10 E., secs. 3, 4, 5, 6.
Containing 24,580.23 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands, as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 30, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-21915 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-32-M

[UT-060-01-4333-12]

September 3, 1991.

TITLE: Requirement for Grand Gulch Permit and Fee.

AGENCY: Bureau of Land Management, Moab.

ACTION: Requirement for Special Recreation Permit and Fee for Non-commercial Recreational Use of the Grand Gulch portion of the Cedar Mesa Special Recreation Management Area.

SUMMARY: Beginning October 1, 1991, the Bureau of Land Management will require special recreation permits and fees for overnight, non-commercial recreation use in the Grand Gulch portion of the Cedar Mesa Special Recreation Management Area. The area where these requirements will be in effect corresponds to the area designated by the Secretary of the Interior as the Grand Gulch Primitive Area located in San Juan County, Utah.

The permit requirement will provide information useful in the development of a more intensive resources protection program for the Grand Gulch. Fees collected from individual, non-commercial visitors will be used to augment protection of the Grand Gulch's outstanding cultural and primitive recreation values.

SUPPLEMENTARY INFORMATION: The Grand Gulch contains the greatest concentration of Anasazi Indian cultural remnants contained on the Public Lands managed by the Bureau of Land Management and is known for its excellent backpacking opportunities. The Grand Gulch has been managed to protect these values since 1970 when the Secretary of the Interior designated it as a Primitive Area. The Grand Gulch is the most well-known portion of the Cedar Mesa Area of Critical Environmental Concern and is included within the boundary of the Grand Gulch Complex Wilderness Study Area.

In the last five-year period, the Grand Gulch has experienced a rapid growth in recreation use. Increased visitation to this sensitive area has magnified the

need to reduce adverse resource impacts and user conflicts. Special recreation permits and recreation use fees will assist with monitoring use and improving management of the area.

The fee for overnight non-commercial recreation use must be paid when entering the Grand Gulch. The fee for such use is initially set at $5.00 per person per trip into the Grand Gulch. The amount of the fee is based upon the fee schedule of $1.50 per person per user day established in the Bureau of Land Management's Final Special Recreation Permit Policy (43 CFR part 8370) published February 10, 1984 and the average length of overnight trips into the Grand Gulch. The fee may very in the future subject to changes in the fee schedule and the average length of stay in the Grand Gulch as determined by permit data. Self-serve permit and fee collection stations will be available at trailheads leading into the Grand Gulch and at the Kane Gulch Ranger Station adjacent to the Grand Gulch.

Advance reservations for non-commercial recreational use are required for individuals or groups planning to utilize pack or saddle stock within Grand Gulch. Persons with an advance reservation for pack or saddle stock may obtain their permit and pay their fee as described above.

FOR FURTHER INFORMATION CONTACT: Leah Quesenberry, Outdoor Recreation Planner, Bureau of Land Management, San Juan Resource Area, P.O. Box 7, Monticello, UT 84535 (801) 587–2141.

Gene Nodine,

District Manager.

[FR Doc. 91–21914 Filed 9–11–91; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-050-4380-11]

Arizona: Long-Term Visitor Area Program for 1991–1992 and Subsequent Use Seasons; Revision to Existing Supplementary Rules Yuma District, AZ, and California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Changes to the Long-Term Visitor Area Program for the 1991–1992 and subsequent use seasons, and revisions to and establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The Bureau of Land Management's Yuma District and California Desert District announce revisions to the Long-Term Visitor Area Program. The Program, which was instituted in 1983, established designated long-term visitor areas and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated long-term visitor areas and purchase a long-term visitor area permit.

Beginning with the 1991–1992 use season, the following modifications are being made to the supplemental rules that apply to the long-term visitor areas.

In addition to rules of conduct set forth in title 43 of the Code of Federal Regulations (CFR), § 8365.1–6, the following changes to the long-term visitor area supplementary rules established September 15, 1989, apply to designated long-term visitor areas.

a. Stipulation 1 shall be reworded to read as follows:

1. *The permit.* A permit is required to occupy a campsite in a designated long-term visitor area between September 15 and April 15. The long-term visitor area permit authorizes the permittee to occupy a campsite within any designated long-term visitor area, using those camping or dwelling unit(s) indicated on the permit receipt, between the period of September 15 and April 15. A fee of $25 is charged for the long-term visitor area permit regardless of the length of stay. No refund will be made on permit fees. Length of stay in any long-term visitor area between April 16 and September 14 is limited to 14 days within any 28-day period.

b. Stipulation 2 shall be reworded to read as follows:

2. *Permit revocation.* The authorized officer may revoke without reimbursement any long-term visitor area permit issued to any person when the permittee violates any Bureau of Land Management rule or regulation or when the permittee, permittee's family, or guests' conduct is inconsistent with the goals of the Bureau of Land Management's Long-Term Visitor Area Program. Failure to return any long-term visitor area permit or sticker to any authorized officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the long-term visitor area system within 12 hours of notice. The revoked permittee will not be allowed back into any long-term visitor area in Arizona or California for the remainder of the long-term visitor area season.

c. Stipulation 3 shall be reworded to read as follows:

3. *The permit sticker.* The permit sticker must be affixed in a clearly visible location at the time of purchase with the adhesive backing to the camping unit (i.e., trailer, camper, or motor home). Post the supplemental sticker, if issued, on the lower passenger side of the windshield of the towing or secondary vehicle. The sticker must be affixed as designated to be valid. A maximum of two (2) secondary vehicles is permitted.

d. Stipulation 5 shall be reworded to read as follows:

5. *Guest policy.* Guests are permitted to stay with a sponsoring long-term visitor area permit holder for 7 days upon purchase of a $10 guest permit. The long-term visitor area permit authorizes permittees to have overnight guests provided the guests have obtained a guest permit. Long-term visitor area permittees may have a maximum of four guests with permits at any one time. A one-time, 7-day guest permit extension is allowed for the full cost of a second guest permit. To purchase a guest permit, guests are required to register with the Campground Host or other designated Bureau of Land Management representatives. Proof of registration is a guest permit form. Guests must stay within 150 feet of the long-term visitor area permittee. The guest is responsible for obeying all applicable rules and regulations. The guest registration form must be displayed on the guest's primary vehicle on the passenger side of the windshield. No refund will be made on the guest permit fees. Guest fees are not applicable towards the purchase of an long-term visitor area permit.

e. Stipulation 11 shall be reworded to read as follows:

11. *Dumping.* Absolutely no dumping of sewage or garbage on the ground. This includes motor oil and any other substances. State sanitation laws and county ordinances specifically forbid these practices. Sanitary dump station locations are shown in the long-term visitor area brochure. Dumping of gray water is prohibited unless otherwise posted.

f. Stipulation 12 shall be reworded to read as follows:

12. *Self-contained vehicles.* In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs Long-Term Visitor Areas, camping is restricted to self-contained camping units only. Self-contained units must have a permanently affixed wastewater holding tank of 10-gallon minimum capacity. Port-a-potty systems, systems that utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self contained. The La Posa Long-Term Visitor Area is restricted to self-contained camping units except within

500 feet of Bureau of Land Management vault toilet. The Imperial Dam Long-Term Visitor Area is also restricted to self-contained units except in the South Mesa area.

g. Stipulation 16 shall be reworded to read as follows:

16. *Parking.* For your safety and privacy, a minimum of 15 feet of space between dwelling units, vehicles, and campfires is required.

h. Stipulation 28 shall be added and will read as follows:

28. *Mule Mountain Long-Term Visitor Area.* All camping within Wiley Well and Coon Hollow campgrounds is restricted to designated sites only.

i. Stipulations 28 through 32 shall be renumbered to stipulations 29 through 33.

j. Additionally, stipulation 32 shall be reworded to read as follows:

32. *Structures and landscaping.* Fixed structures of any type are restricted and must conform to posted policies. This includes but is not limited to fences, dog runs, storage units, and windbreaks. No alterations to the natural landscape are allowed. Painting rocks or defacing or otherwise damaging any natural or archaeological feature is prohibited.

All other stipulations as established on September 15, 1989, shall remain the same.

EFFECTIVE DATE: September 15, 1991.

FOR FURTHER INFORMATION CONTACT: Don Applegate, Outdoor Recreation Planner, Yuma District, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300; or Chris Roholt, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507, 714–653–1359.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Area Program is to provide areas for long-term winter camping use. The sites designated as long-term visitor areas are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The Program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of long-term visitor areas assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without a long-term visitor area permit outside of long-term visitor areas, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period. The Mule Mountain Long-Term Visitor Area is also open to short-term camping without a long-term visitor area permit for a period not to exceed 14 days.

Authority for the designation of long-term visitor areas is contained in 43 CFR 8372.0–3 and 0–5(g). Authority for the establishment of a Long-Term Visitor Area Program is contained in 43 CFR 8372.1, and for the payment of fees is contained in 36 CFR 71.

The authority for establishing supplementary rules is contained in CFR title 43, chapter II, 8365.1–6. The long-term visitor area supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all long-term visitor areas are available at both the California Desert District and Yuma District Offices.

Dated: September 3, 1991.

Ed Hastey,

State Director, California.

Dated: August 6, 1991.

Larry P. Bauer,

Acting State Director, Arizona.

[FR Doc. 91–21916 Filed 9–11–91; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–01–4730–12]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., September 4, 1991.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, 1901 and 1904 meanders of the Salmon River, and Mineral Survey Nos. 1925 and 2022; the subdivision of certain sections and the survey of a partition line in the NW ¼ of section 13, T. 26 N., R. 1 E., Boise Meridian, Idaho, Group No. 726, was accepted August 21, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: September 4, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91–21956 Filed 9–11–91; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before Aug. 31, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 27, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Hale County

Hatch House, Jct. of AL 14 and Norfleet Rd., Hale vicinity, 91001483

Lawrence County

Holland, Thomas, House, Off Alt. US 72 S of Hillsboro, Hillsboro vicinity, 91001478

St. Clair County

Ash, John, House, US 411 W of jct. with US 231, Ashville vicinity, 91001479

Newton, Rev. Thomas, House, S of US 411, W of jct. with US 231, Ashville vicinity, 91001480

COLORADO

Mesa County

Grand Valley Diversion Dam, Across Colorado R. N of jct. with Plateau Cr., 8 mi. NE of Palisade, Palisade vicinity, 91001485

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

City Tavern, 3206 M St., NW., Washington, 91001489

Commercial National Bank, 1405 G St., NW., Washington, 91001488

Miner Normal School, 2565 Georgia Ave., NW., Washington, 91001490

MISSOURI

Dunklin County

Campbell Commercial Historic District, Roughly bounded by Magnolia St., Martin Ave., Locust St. and the St. Louis & Southwest RR tracks, Campbell, 91001482

NEW JERSEY

Essex County

Glencoe, 698 Martin Luther King Blvd., Newark, 91001481

Morris County

Mount Freedom Presbyterian Church, Jct. of Sussex Tpk. and Church Rd., Randolph Township, Mount Freedom, 91001484

Somerset County

Liberty Corner Historic District, Roughly, jct. of Church St. and Valley and Lyons Rds, and area W and SW, Bernards Township, Liberty Corner, 91001477

NORTH CAROLINA

Alleghany County

Vogler, William T., Cottage, NC 1478 E side, approx., 1.3 mi. NE of US 21, Roaring Gap, 91001492

Halifax County

Grace Episcopal Church, 404 Washington Ave., Weldon, 91001493

OHIO

Cuyahoga County

Gates Mills Historic District [Gates Mills MPS], Roughly, along Berkshire, Chagrin River, Epping, Old Mill and Sherman Rds., Gates Mills, 91001491

Jefferson County

North End Neighborhood Historic District, Roughly, N. Fourth St. from Dock St. to Franklin Ave. and E side of jct. of Franklin and N. Fifth St., Steubenville, 91001486

Montgomery County

Shawen Acres, 3304 N. Main St., Dayton, 91001487

[FR Doc. 91-22006 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S.C. appendix (1988).

DATES AND TIME: October 17, 1991, 8 a.m. to 5 p.m., October 18, 1991, 8 a.m. to Noon.

ADDRESSES: Days Inn, 2325 Bainbridge Street, La Crosse, Wisconsin 54603.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

This is also to notify all concerned and interested parties that because the Federal Government's fiscal year 1992 begins on October 1, 1991, there is a possibility that budget authority may not be available in time to allow this meeting to occur. If no appropriations or continuing resolution has been passed, or if budget authority is for any other reason not available, the meeting may be cancelled on very short notice. Those planning to attend may telephone Ms. Judy Skipski, Planning and Environmental Quality, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, at 402-21-3481 prior to October 15 to ascertain the status of the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by P.L. 101-398, September 28, 1990.

Dated: September 5, 1991.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 91-22005 Filed 9-11-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Institution of Magnesium From Canada and Norway

[Investigations Nos. 701-TA-309 and 310 and 731-TA-528 and 529 (Preliminary)]

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-309 and 310 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada and Norway of primary magnesium,[1] that are alleged to be subsidized by the Governments of Canada and Norway.

The Commission hereby also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-528 and 529 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada and Norway of primary magnesium, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by October 21, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201) and part 207, subparts A and B (19 CFR part 207)

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-205-3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 5, 1991, by Magnesium Corp. of America (MagCorp), Salt Lake City, UT.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in

[1] The merchandise covered by these investigations is primary magnesium whether pure or alloyed. Pure magnesium is provided for in subheading 8104.1100.00 of the Harmonized Tariff Schedule of the United States (HTS), and is defined as unwrought magnesium containing at least 99.8 percent magnesium by weight. Magnesium alloys are provided for in subheading 8104.1900.00 of the HTS, and are defined as unwrought magnesium containing less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight.

§§ 201.11 and 207.10 of the commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on Thursday, September 26, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than Monday, September 23, 1991, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Tuesday, October 1, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 6, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–21910 Filed 9–11–91; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on September 3, 1991, a proposed Consent Decree in *United States* v. *Friedrich Air Conditioning & Refrigeration Company*, Civil Action No. SA–91–CA–0913, was lodged with the United States District Court for the Western District of Texas, San Antonio Division. The proposed Consent Decree requires the Defendant Friedrich Air Conditioning & Refrigeration Company to pay a civil penalty of $84,000 for discharging pollutants in violation of Sections 301(a) and 307(d) of the Clean Water Act, 33 U.S.C. 1311(a) and 1317(d), and the Federal Categorical Standards as specified at 40 CFR parts 403 and 433.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Friedrich Air Conditioning & Referigeration Company*, D.J. Ref. No. 90–5–1–1–3291.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Texas, San Antonio Division, 727 East Durango Boulevard, San Antonio, Texas 78206, at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 91–21961 Filed 9–11–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC"), on July 22, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: M/A–COM, Inc. as a member and Hampshire Instruments Inc., Process Technology Limited, Prometrix Corporation, and VLSI Standards, Inc. as affiliate members. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). The most recent notification of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989 (54 FR 49123–24). Subsequent notifications filed on February 20, 1990, May 16, 1990, July 18, 1990, and February 19, 1991, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), August 15, 1990 (55 FR 33389–390), and March 15, 1991 (56 FR 11275), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, disclosing further membership changes,

were published on November 27, 1990 (55 FR 49349).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-21958 Filed 9-11-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Software Productivity Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Software Productivity Consortium ("SPC"), on July 26, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Syscon Corporation, a subsidiary of Harnischfeger Industries, has been admitted as a member of SPC effective May 6, 1991. Except as indicated above, no other changes have been made in either the membership or planned activity of SPC.

On December 21, 1984, SPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). Since then, SPC filed additional notifications on April 23, 1985, September 24, 1985, December 10, 1985, February 13, 1986, and November 30, 1989, identifying changes in its membership, and the Justice Department published notice of these changes in the **Federal Register** on May 21, 1985 (50 FR 20954), October 22, 1985 (50 FR 42786), January 13, 1986 (51 FR 1450), March 11, 1986 (51 FR 8373), and January 10, 1990 (55 FR 926), respectively. SPC also filed additional notifications on December 19, 1988, December 27, 1988, March 23, 1989, November 7, 1990, and March 26, 1991, notices of which the Department published on January 31, 1989 (54 FR 4922), May 4, 1989 (54 FR 19256-57), December 10, 1990 (55 FR 50787), and August 1, 1991 (56 FR 36848), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-21959 Filed 9-11-91; 8:45 a.m.]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on August 12, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608). On May 4, 1989, August 1, 1989, October 31, 1989, January 31, 1990, May 1, 1990, July 30, 1990, November 13, 1990, February 6, 1991, and May 17, 1991, UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), December 28, 1990 (55 FR 53368), March 15, 1991 (56 FR 11273), and June 20, 1991 (56 FR 28417), respectively.

As of August 5, 1991, the following have become members of UNIX International, Inc.:

Com Food Software GMBH
Cornell University
Fujifacom Corporation
Gradient Technologies, Inc.
Mead Data Central
Ngee Ann Polytechnic, Singapore
Seikosha Co., Ltd.
Sigma Systems, Inc.
Swiss Federal Institute of Technology (EPFL)
Tata Unisys Limited
Technical University of Budapest (BME)
Tokyo Electric Co., Ltd.
United States Military Academy
Wal-Mart Stores Inc.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-21960 Filed 9-11-91; 8:45 am]

BILLING CODE 4410-01-M

DRUG ENFORCEMENT ADMINISTRATION

[Docket No. 90-39]

Dobson Drug Co., Inc.; Revocation of Registration

On May 4, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Dobson Drug Company, Inc. (Respondent) proposing to revoke the pharmacy's DEA Certificate of Registration, AD1202768, and deny any pending applications for the renewal of such registration as a retail pharmacy. The statutory predicate for the proposed action was the controlled substance-related felony convictions of Wallace Arrington, the owner and pharmacist of Respondent pharmacy. 21 U.S.C. 824(a)(2).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Newman, Georgia on January 17, 1991. On June 14, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed to Judge Bittner's opinion and recommended ruling and on July 18, 1991, the record was transmitted to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent pharmacy is owned and operated by Wallace Arrington, R. Ph. On August 9, 1988, a cooperating individual went to Respondent pharmacy while being monitored by the Georgia Drugs and Narcotics Agency. Upon entering the pharmacy the cooperating individual did not have any controlled substances or prescriptions in his possession. The cooperating individual was in the pharmacy for approximately five minutes and emerged with two vials, one containing six white tablets, later identified as glutethimide, and one containing 25 blue and clear capsules, later identified as phentermine, both controlled substances.

On August 16, 1988, the cooperating individual accompanied by a Georgia Bureau of Investigation Agent, acting in an undercover capacity, went to Respondent pharmacy, asked Wallace

Arrington if he had any of "the white pills", and was told that he would not have any until later in the week. The undercover agent and cooperating individual returned to Respondent pharmacy on August 22, 1988, at which time the cooperating individual told Mr. Arrington that he was there for "the white pills." The cooperating individual accompanied Wallace Arrington to the rear of the pharmacy where Mr. Arrington gave the individual an injection of vitamin B–12 mixed with a male hormone. Mr. Arrington and the cooperating individual then returned to the front of the pharmacy where the undercover agent observed Wallace Arrington hand the cooperating individual a vial of white pills, later identified as glutethimide. The undercover agent then paid Wallace Arrington for the pills and some hydrocortisone cream.

At the hearing in this matter, there was a dispute as to whether the undercover agent actually saw Wallace Arrington hand the cooperating individual the glutethimide. The undercover agent testified that she saw the exchange, however, a tape recording made of the visit indicates that the undercover agent asked the cooperating individual, "when did he give them to you?" In explaining the tape recording, the undercover agent testified that she did in fact see the exchange and misstated her inquiry, meaning to ask the cooperating individual how Wallace Arrington obtained the pills, i.e. whether he took them from a shelf or elsewhere. The administrative law judge found the undercover agent to be a credible witness and, therefore, found that she did in fact see Wallace Arrington give the glutethimide to the cooperating individual.

The undercover agent returned to Respondent pharmacy on August 25 and September 9, 1988, to attempt to purchase controlled substances for weight control. On both occasions, the undercover agent obtained what she thought were controlled substance pills from Respondent pharmacy. However, the pills were later identified as caffeine and ephedrine, both non-controlled substances.

On September 13, 1988, a search warrant was executed at Respondent pharmacy and various controlled substance records were seized. In addition, the search disclosed 100–150 prescriptions pre-signed by approximately 20 area physicians. The pre-signing of prescriptions is prohibited federally by 21 CFR 1306.05, and in 1986, the State of Georgia passed a law specifically prohibiting the practice. Also discovered during execution of the search warrant was a large trash bag in the back of the pharmacy containing hand-rolled marijuana cigarettes and loose white pills, later identified as glutethimide.

An accountability audit was conducted of Respondent pharmacy's handling of controlled substances during the period May 1, 1987 to September 13, 1988. The audit revealed significant overages and shortages of Schedule III and IV controlled substances, for example, a shortage of 12,275 dosage units of phenermine, of 41% of all of the phentermine for which Respondent was accountable during the audit period; and a shortage of 7,120 dosage units of Valium 10 mg., or approximately 64% for which Respondent was accountable. Both overages and shortages indicate violations of Georgia and Federal statutes and regulations. During the course of conducting the audit, the Georgia Drugs and Narcotics agent did not discover any prescriptions written for the cooperating individual.

On January 9, 1990, Wallace Arrington was indicted in the Carroll County Superior Court and charged with various controlled substance violations. Pursuant to a negotiated plea agreement, Mr. Arrington pled guilty to a felony count of unlawfully selling glutethimide or August 22, 1988, and to a felony count of unlawfully refusing and failing to make and keep complete records and information regarding controlled substances and failing to account for all distribution of controlled substances. On February 1, 1990, the court dismissed the other counts listed in the indictment, and sentenced Wallace Arrington to four years probation, fined him $2,500.00, and ordered him to refrain from filling prescriptions for six months beginning March 15, 1990.

The Georgia State Board of Pharmacy (Board) held a hearing regarding possible sanctions against Respondent pharmacy and Wallace Arrington personally. On June 14, 1990, the hearing officer issued an initial decision which found that the September 13, 1988, search and subsequent accountability audit revealed serious shortages and overages of potentially abusable substances and large quantities of unlabeled or improperly labeled controlled substances. The hearing officer concluded that Wallace Arrington had violated numerous state laws relating to controlled substances, including: Failing to maintain his pharmacy in the manner prescribed by law; failing to maintain accurate records; holding adulterated or misbranded drugs; failing to acquaint himself with the laws, rules and regulations of the Board; and failing to maintain sufficient controls against diversion of controlled substances.

The hearing officer recommended that Wallace Arrington's pharmacy license be suspended for five years with the suspension stayed after September 15, 1990, provided that he complete, at his own expense, 20 hours of Board approved continuing pharmaceutical education in the subject matter of recordkeeping, dispensing, selling, disposing of and inventory of controlled substances. The hearing officer also recommended that Wallace Arrington and Respondent pharmacy pay fines totalling $2,500.00. On July 19, 1990, the Board issued a final decision in which it adopted the findings of fact, conclusions of law and recommended decision of the hearing officer.

Respondent pharmacy asserts that Wallace Arrington never unlawfully sold controlled substances to the cooperating individual. The administrative law judge did not credit Wallace Arrington's testimony in support of this assertion. First, Judge Bittner found that Mr. Arrington was frequently less than responsive to questions posed during cross examination and gave the overall impression that he was more concerned with tailoring his testimony to fit his defenses than with telling the truth. Second, Wallace Arrington pled guilty to unlawfully selling glutethimide to the cooperating individual on August 22, 1988.

Respondent pharmacy contends, the cooperating individual, who has a lengthy criminal record, stole the substances from the pharmacy. In support of this assertion, Wallace Arrington explained at the hearing that prior to his arrest in September 1988, his customers, including the cooperating individual, moved freely throughout the store and pharmacy area, and thus had access to the controlled substances.

Wallace Arrington testified that he did not suspect that controlled substances were being stolen from Respondent pharmacy until "about the time that all this started," apparently referring to the investigation, audit and arrest. However, Wallace Arrington also testified, somewhat inconsistently, that prior to the cooperating individual's frequent visits to Respondent pharmacy, another individual stole a bottle of 500 Valium and then returned the drugs before Mr. Arrington knew they were missing.

Respondent also argues that the accountability audit was flawed because it was performed while Wallace

Arrington was in jail and therefore not able to assist the agents. However, no credible evidence was presented at the hearing to support this argument.

Respondent also persented evidence at the hearing as to Wallace Arrington's character, the need for Respondent pharmacy in the community, and Respondent's need for a DEA registration. Wallace Arrington testified that Respondent is the "only old-fashioned country independent drug store" in Bowden, but he conceded that there are three other pharmacies in the Bowden community.

The administrative law judge concluded that it is well established that a pharmacy's registration may be revoked based on the actions of its managing pharmacist, owner, majority shareholder, or other key employee. See, Cumberland Prescription Center, Docket No. 86-91, 52 FR 37224 (1987). In the instant case Wallace Arrington is the owner and managing pharmacist of Respondent, and thus his conduct may be considered in determining whether Respondent's DEA registration should be revoked.

Judge Bittner then concluded that pursuant to 21 U.S.C. 824(a)(2), conviction of a felony relating to controlled substances is grounds for revocation of a DEA registration. It is thus clear that Mr. Arrington's felony convictions relating to unlawful sale of a controlled substance and failure to maintain accurate records pertaining to controlled substances provide a basis for the revocation of Respondent's registration. The administrative law judge further concluded that Respondent's continued registration would be inconsistent with the public interest and therefore the pharmacy's registration could be revoked pursuant to 21 U.S.C. 824(a)(4).

The Administrator concludes that Judge Bittner's consideration of 21 U.S.C. 824(a)(4) was unnecessary. Once shown that Wallace Arrington was convicted of controlled substance-related felony offenses, a lawful basis exists to revoke Respondent pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2). Then, it is at the Administrator's discretion whether or not to revoke the registration.

After careful consideration of the entire record, the Administrator concludes that Respondent's registration should be revoked. Wallace Arrington unlawfully sold glutethimide to a cooperating individual on August 22, 1988. An audit of Respondent's controlled substances revealed enormous shortages of controlled substances. Wallace Arrington pled guilty to two felony charges based on the August 22, 1988 sale of a controlled substance and the audit. Mr. Arrington's testimony at the hearing revealed that prior to his arrest in September 1988, his customers had unrestricted access to the pharmacy's controlled substances, and he failed to take measures to secure the pharmacy's controlled substances despite his knowledge of at least one incident of stolen Valium.

Furthermore, the search warrant executed at Respondent pharmacy revealed marijuana cigarettes, pre-signed prescriptions and loose glutethimide pills in a trash bag. In addition, the Georgia State Board of Pharmacy's hearing officer found that Wallace Arrington maintained large quantities of mislabeled or unlabeled controlled substances in Respondent pharmacy.

The administrative law judge concluded, and the Administrator concurs, that Wallace Arrington has egregiously abused his privileges as a DEA registrant. Mr. Arrington showed no remorse for his behavior, and did not acknowledge any wrongdoing at all.

Judge Bittner recommended that Respondent pharmacy's DEA Certificate of Registration be revoked. The Administrator adopts the administrative law judge's opinion and recommended ruling, findings of fact and conclusions of law, with the exception of Judge Bittner's reliance on 21 U.S.C. 824(a)(4), in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AD1202768, previously issued to Dobson Drug Company, Inc., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective October 15, 1991.

Dated: September 5, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-21869 Filed 9-11-91; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL INSTITUTE OF CORRECTIONS

Advisory Board Meeting

Time and Date: 8 a.m., Tuesday, October 8, 1991.

Place: Old Colony Inn, 625 First Street, Alexandria, Virginia.

Status: Open.

Matters to Be Considered

An update on the feasibility study and pilot for the Corrections Satellite Television Network, an update on the relocation of the National Academy of Corrections, the Jail Center, and the Information Center, an update on the Prisons Industries Project, and an update on foreign technical assistance.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 91-21917 Filed 9-11-91; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-80)]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, FAX (202) 755-2371.

Patent Application 07/507,553: Variable Orifice Flow Regulator; filed April 11, 1990.

Patent Application 07/508,316: Polyimididazoles Via Aromatic Nucleophilic Displacement; filed April 12, 1990.

Patent Application 07/508,154: Rotationally Actuated Prosthetic Helping Hand; filed April 12, 1990.

Patent Application 07/508,386: Regenerative Cu La Zeolite Supported Desulfurizing Sorbent; filed April 12, 1990.

Patent Application 07/516,489: Process for Developing Crystallinity in Linear Aromatic Polyimides; filed April 30, 1990.

Patent Application 07/516,573: Hypervelocity Impact Shield; filed April 30, 1990.

Patent Application 07/516,856: Overcenter Collet Space Station Truss Fastener; filed April 30, 1990.

Patent Application 07/517,114: Multistage Estimation of Received Carrier Signal Parameters Under Very High Dynamic Conditions of the Receiver; filed May 1, 1990.

Patent Application 07/502,472: Polyimider with Improved Compression Moldability; filed May 8, 1990.

Patent Application 07/524,110: Solder Dross Removing Apparatus; filed May 10, 1990.

Patent Application 07/522,949: Bilevel Shared Control for Teleoperators; filed May 11, 1990.

Patent Application 07/524,108: Thermal Remote Anemometer System; filed May 16, 1990.

Patent Application 07/524,109: Process for Application of Powder Particles to Filamentary Materials; filed May 16, 1990.

Patent Application 07/523,675: Sample Holder Support for Microscope; filed May 16, 1990.

Patent Application 07/523,692: Modified Fast Frequency Acquisition Via Adaptive Least Square Algorithm; filed May 16, 1990.

Patent Application 07/528,666: High Temperature Polymers from M-(3-Ethynlphenyl) Maleimide; filed May 18, 1990.

Patent Application 07/524,959: Method of Forming Three-Dimensional Semiconductor Structure; filed May 18, 1990.

Patent Application 07/527,462: Rotating-Unbalanced-Mass Devices and Methods for Scanning Balloon-Borne Experiments Free Flying; filed May 23, 1990.

Patent Application 07/540,976: Real-Time Data Compression of Broadcast Video Signals; filed June 20, 1990.

Patent Application 07/544,293: Method for Producing A Polarization Filter for Processing Synthetic Aperture Radar Image Date; filed June 25, 1990.

Patent Application 07/543,926: Wet Spinning of Solid Polyanic Acid Fibers; filed June 26, 1990.

Patent Application 07/545,088: Substituted 1,1,1,-Triary-2,2,2,-Trifluoroethanes and Processes for Their Synthesis; filed June 28, 1990.

Patent Application 07/545, 220: Variable Magnification Glancing Incidence X-Ray Telescope; filed June 28, 1990.

Patent Application 07/545,089: Variable Magnification Variable Dispersion Glancing Incidence Imaging X-Ray Spectroscopic Telescope; filed June 28, 1990.

Patent Application 07/545,008: Multispectral Variable Magnification Glancing Incidence X-Ray Telescope; filed June 28, 1990.

Patent Application 07/545,233: Bin-Reaction Cell Culture Process; filed June 28, 1990.

Patent Application 07/545,170: Generation of Animation Sequences of Three Dimensional Models; filed June 28, 1990.

Patent Application 07/545,235: A General Purpose Architective for Intelligent Computer-Aided Training; filed June 28, 1990.

Patent Application 07/545,177: Three Dimensional Moire Pattern Alignment; filed June 28, 1990.

Patent Application 07/545,236: Multicomponent Gas Sorption Joule-Thomson Refrigerator; filed June 28, 1990.

Patent Application 07/545,015: Direct Drive Robotic Hand; filed June 28, 1990.

Patent Application 07/543,915: Self-Checking On-Line Testable Static RAM; filed June 28, 1990.

Patent Application 07/545,016: Passivation of High Temperature Superconductors; filed June 28, 1990.

Patent Application 07/545,019: High Speed Magneto-Resistive Random Accessor Memory; filed June 28, 1990.

Patent Application 07/545,014: Improving the Geometric Fidelity of Imaging Systems Employing Sensor Arrays; filed June 28, 1990.

Patent Application 07/545,178: Hydraulic Lifting Device; filed June 28, 1990.

Patent Application 07/000,000: Portable Dynamic Fundus Instrument; filed June 29, 1990.

Dated: September 4, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91-21966 Filed 9-11-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice (91-81)]

Government-owned Inventions; Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, FAX (202) 755-2371.

Patent Application 07/479,485: Silicon Containing Electro-Conductive Polymers and Structure made Therefrom; filed February 7, 1990.

Patent Application 07/480,385: All Optical Photochromic Spatail Light Modulars Based on Photoinduced Electron Transfer Right Matrices; filed February 15, 1990.

Patent Application 07/480,449: VLSI Architecture for A Reed-Solomon Decoder; filed February 15, 1990.

Patent Application 07/480,958: Orbital Debris Sweeper and Method; filed February 16, 1990.

Patent Application 07/481,013: Auto and Hetero-Associative Memory Using A 2-D Optical Logic Gate; filed February 16, 1990.

Patent Application 07/481,538: Standard Remote Manipulator System Docking Target Augmentation for Automated Docking; filed February 20, 1990.

Patent Application 07/481,537: Closed-Loop Autonomous Docking System; filed February 20, 1990.

Patent Application 07/488,387: Poltrusion Die Assembly and Method; filed February 23, 1990.

Patent Application 07/486,668: Process for the Manufacture of Seamless Metal-Clad Fiber-Reinforced Organic Matrix Composite Structures; filed February 28, 1990.

Patent Application 07/486,455: Tank Gauging Apparatus and Method; filed February 28, 1990.

Patent Application 07/486,458: Power Saw; filed February 28, 1990.

Patent Application 07/488,578: Growthing III-V Films by Control of MBE Growth Front Stoichiometry; filed February 28, 1990.

Patent Application 07/489,997: Predictive Sensor Method and Apparatus; filed March 7, 1990.

Patent Application 07/493,529: Bifilm Moistoring Coupen System; filed March 14, 1990.

Patent Application 07/493,190: System and Method for Measuring Ocean Surface Currents at Locations Remote from Land Masses Using; filed March 14, 1990.

Patent Application 07/435,969: Thin Solar Cell and Lightweight Array; filed March 20, 1990.

Patent Application 07/506,636: Laser Optical Disk Position Encoder with Active Heads; filed March 30, 1990.

Patent Application 07/501,909: Heat Exchange with Oscillating Flow; filed March 30, 1990.

Patent Application 07/501,910: Mechanical End Joint System for Connecting Structural Column Elements; filed March 30, 1990.

Patent Application 07/501,893: Heat Transfer Device and Method of Making the Same; filed March 30, 1990.

Patent Application 07/503,486: Selective Emitter; filed March 30, 1990.

Patent Application 07/503,418: Quickaction Clamp; filed March 30, 1990.

Patent Application 07/503,408: Wide Acceptance Angle High Concentration Ratio, Optical Collector; filed March 30, 1990.

Patent Application 07/506,136: Programmable Remapper with Single Flow Architecture; filed March 30, 1990.

Patent Application 07/503,410: Quick Connect Coupling; filed March 30, 1990.

Patent Application 07/501,908: Pseudomonas Diagnostic Assay; filed March 30, 1990.

Patent Application 07/506,137: MBE Growth Technology for High Quality Strained 3–5 Layers; filed March 30, 1990.

Patent Application 07/503,409: Metal Chloride Cathode for a Battery; filed March 30, 1990.

Patent Application 07/503,487: New Core Design for Use With Precision Composite Reflectors; filed March 30, 1990.

Patent Application 07/501,892: Planar Microstrip Yagi Array Antenna; filed March 30, 1990.

Dated: September 4, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91–21997 Filed 9–11–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting: Correction.

SUMMARY: In the notice published September 9, 1991, (56 FR 46016) the meeting dates and times were not clearly stated. This document sets forth the correct times for the hearings and the meeting as stated below.

DATES: Public Hearings—September 19, 1991, 1:30 p.m. to 5 p.m., September 20, 1991, 9:00 a.m. to 5 p.m.; Meeting—September 21, 1991, 9:00 a.m. to 1:00 p.m.

ADDRESSES: Hyatt Regency Hotel, 400 New Jersey Ave., NW., Washington, DC 20001, (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275–0045.

TYPE OF MEETING: Open.

AGENDA:

Call to Order,
Roll Call,
Chairman's Message,
Introduction of Commissioners and Guests,
Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91–21985 Filed 9–11–91; 8:45 am]

BILLING CODE 6820–07–M

NUCLEAR REGULATORY COMMISSION

Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated July 25, 1991, F. Robert Cook requests that the Director of the Office of Nuclear Material Safety and Safeguards exercise his authority to require submittal of a license application from the Department of Energy (DOE) with respect to certain high-level radioactive wastes (spent fuel) from NRC licensed reactors in sites at Hanford. The Petition states that the DOE practices with respect to those high-level radioactive materials are inconsistent with 10 CFR parts 60 and 72. The Petitioner asserts as grounds for this request that (1) Section 202(3) of the Energy Reorganization Act of 1974 (ERA) requires such license application and (2) the exemption of section 202(4) of the ERA does not apply since the designated spent fuel wastes in storage at Hanford are "non-Administration generated wastes" (the Energy Research and Development Administration referenced in section 202 of the ERA is now the DOE) and the burial trenches in the "200 Area" at Hanford are not facilities considered to be used for "research and development activities." The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2021 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 3rd day of September.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–21993 Filed 9–11–91; 8:45 am]

BILLING CODE 7590–01–M

GPU Nuclear Corporation and Jersey Central Power & Light Co.; Issuance of Amendment to Facility Operating License

[Docket No. 50–219]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 153 to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises Technical Specifications (TS) 3.4.A.3, 3.4.A.4, 3.4.D.2 and the associated Bases of the Technical Specifications to incorporate the 10 CFR 50.46 loss-of-coolant accident analysis that is the basis for the MAPLHGR limits provided in the TS Section 3.10 "Core Limits."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 19, 1990 (55 FR 38620). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for

amendment dated August 14, 1990, as supplemented June 18, 1991, (2) Amendment No. 153 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 5th day of September 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-21995 Filed 9-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, 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 Nos. DPR-53 and DPR-69 issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 located in Calvert County, Maryland.

The proposed amendment would allow the removal of the dedicated Class 1E shared emergency power source from a shutdown unit for seven days. The current Technical Specifications (TS) are structure so that the shared No. 12 Emergency Diesel Generator (EDG) cannot be removed from service for more than 72 hours without both Calvert Cliffs units being shutdown. The licensee is required to remove No. 12 EDG from service on October 18, 1991, to perform the inspection and maintenance activities required by TS 4.8.1.1.2.d.1. The licensee's current maintenance policy recommends that 7 days be allotted to conduct the inspection and maintenance activities in a quality manner. To facilitate this and certain other required maintenance and surveillance testing, the licensee will shut down one unit before the current surveillance interval for the No. 12 EDG expires. The operating unit requires two Class 1E emergency power sources to be operable. The operable dedicated diesel from the shutdown unit will be aligned to the operating unit during the time that the No. 12 EDG is out of service. Compensatory measures will be taken for the shutdown unit to provide assurance that A.C. electrical power will be available to the equipment necessary to maintain the shutdown unit in a safe condition during this scheduled maintenance interval.

Specifically, the proposed changes will modify TS Sections 3.8.1.2, "Electrical Power Systems—Shutdown", and 3.8.2.2, A.C. Distribution—Shutdown", for both units. The TS change provides for a special test exception from the present requirement for an operable EDG on the shutdown unit, and will allow the dedicated EDG from the shutdown unit to be aligned to the operating unit. Compensatory measures which will be taken for the shutdown unit included in the proposed TS changes are:

Either two 500 kV offsite power circuits or one 500 kV offsite power circuit and the 69 kV Southern Maryland Electric Cooperative (SMECO) offsite power circuit shall be verified available and the availability confirmed once per shift;

Core alterations, positive reactivity changes, movement of irradiated fuel and movement of heavy loads over irradiated fuel will be suspended, and containment penetration closure will be established; and

A temporary diesel generator capable of carrying the shutdown unit's A.C. electrical loads will be verified available.

If these conditions are not met, then 4 hours are allotted to restore availability of the temporary diesel generator and the off-site power sources. If they are not made available within the next 4 hours, then an operable EDG must be aligned to the shutdown unit within 4 hours. This will place the operating unit in TS Action statement 3.8.1.1.b (lack of two EDGs) which allows 72 hours to restore two operable EDGs or be in hot standby in 6 hours and in cold shutdown in 30 hours. The TS Bases are also modified to support the above proposed changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change was evaluated to determine its impact on the probability or consequences of a loss of offsite power event, a boron dilution event, and a fuel handling incident. The boron dilution event and the fuel handling incident are the only two accidents that are explicitly analyzed in the Updated Final Safety Analysis Report (UFSAR) for a shutdown unit.

There is a very low probability of occurrence of a loss of offsite power during the seven day period that No. 12 Emergency Diesel Generator (EDG) would be out of service for inspection and maintenance. This configuration will only be required until two additional Class 1E EDGs (one for each unit) will be installed (about February 1995) as part of BG&E's implementation of the Station Blackout Rule (10 CFR 50.63). These new EDGs would provide sufficient flexibility for scheduling and performing maintenance such that this relief from technical specification requirements will no longer be needed.

To ensure a low probability of a loss of offsite power, BG&E has reviewed potential precursors such as weather events and onsite work activities. The Calvert Cliffs offsite power supply is designed to be diverse and redundant, and is therefore inherently capable of withstanding severe weather events. In addition, BG&E's Emergency Response Plan already requires that certain actions be taken, up to and including shutdown of both units, on the approach of a severe storm.

As regards work-related events, the probability of a loss of offsite power is maintained low by prohibiting planned maintenance on the two 500 kV transmission lines and in the switchyard. Availability of the independent offsite power source, the 69 kV Southern Maryland Electric Cooperative (SMECO) feeder, will be verified once per shift. This requirement to maintain two available qualified offsite power sources compares favorably with the requirements of the current technical specifications to maintain only one offsite source to the shutdown unit.

A temporary diesel generator will also be installed to provide a backup onsite source of

power capable of supporting necessary safety-related loads.

Finally, potential accident precursors such as core alterations, positive reactivity insertions, movement of irradiated fuel, and movement of heavy loads over irradiated fuel will be prohibited while No. 12 EDG is out of service. Therefore, the probability of a boron dilution event or fuel handling incident is decreased during the operations allowed by this change.

The requirement to maintain containment penetration closure while No. 12 EDG is out of service ensures that the consequences of an accident would not be significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

A temporary diesel generator is being installed onto the 4 kV bus of a shutdown (Mode 5 or 6) unit while the dedicated EDG for this unit is transferred for up to seven days to the operating unit. This configuration allows the performance of inspection and maintenance required by Technical Specification 4.8.1.1.2.d.1 for No. 12 EDG. This change has been evaluated and it has been determined that this installation does not impair any existing safety-related equipment needed to maintain the unit in a safe shutdown condition. Differences in the operation of the temporary diesel generator and the permanent EDGs include manual starting of the temporary diesel generator and manual loading of the 4 kV bus. These operations are not significantly different from typical operator activities.

Therefore, the proposed changes would not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

The operability of the minimum specified A.C. and D.C. electrical power sources and associated distribution systems during Modes 5 and 6 ensure that: (1) the unit can be maintained in Mode 5 or 6 for extended time periods and, (2) sufficient instrumentation and control capability is available for monitoring and maintaining the unit status. The proposed change does not affect the D.C. power sources or the A.C. and D.C. distribution systems. It affects only the A.C. power sources in that we are removing the emergency A.C. power source from the shutdown unit for seven days. This change will have no impact on the offsite power sources. Compensatory measures will be taken for the loss of the emergency power source. They are:

- requiring that two offsite power sources are available,
- core alterations, positive reactivity changes, movement of irradiated fuel, and movement of heavy loads over irradiated fuel will be suspended, and
- containment penetration closure will be established.

These compensatory measures reduce the potential for a loss of offsite power, a fuel handling accident, and a boron dilution event during the seven days that the emergency power source is not available to the shutdown unit. Additionally, we are providing a temporary diesel generator capable of supplying the loads necessary to maintain the unit in a safe condition. These measures, along with the infrequent need to enter this condition, ensure that the margin of safety is not significantly reduced.

Therefore, the proposed change would not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (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 submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S.. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 15, 1991, 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 a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Calvert County Library, Fourth Street, P.O. Box 405, Prince Frederick, Maryland. 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 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 as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the

applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If 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 immediately 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 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, 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 consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** 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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, 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 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 Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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 September 5, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Calvert County Public Library, Fourth Street, P.O. Box 405, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 6th day of September 1991.

For the Nuclear Regulatory Commission.

Brian C. McCabe,

Acting Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–21994 Filed 9–11–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Review of Instructions for DPRS–2809 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the expedited review by OMB for a clearance of instructions for the information collection, DPRS–2809—Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees. The form appeared for comment in the **Federal Register** on August 20, 1991, and now we are submitting the instructions. These instructions at present are cleared under 3206–0141; however, they are now being cleared seqarately and will be under the same clearance as the DPRS 2809. DRPS–2809 is completed by the former spouse of employees, separated employees, or children of employees who wish to change enrollment in the FEHB Program during the annual open season.

Approximately 15,000 forms are completed annually, each requiring approximately 10 minutes to complete for a total public burden of 2,500 hours.

The proposed instructions follow this notice.

DATES: Comments on this proposal should be received on or before September 17, 1991. OMB will act upon this clearance within 2 calendar days after the close of the comment period.

ADDRESS: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, CHP 500, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Human Resources and Housing Branch, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

1991 Spouse Equity and Temporary Continuation Enrollee

Information and Instruction Sheet For Completing DPRS Form 2809—DRAFT

Carefully read the following instructions before completing your request form.

The enclosed Direct Premium Remittance System (DPRS) Form 2809 has been designed for speedy processing. It has been personalized with you rname and social security number. This form should not be used by anyone other than the addressee and must be signed by the addressee.

Your personalized DPRS Form 2809 allows you to:

1. Change your current health benefits plan.

2. Request plan brochures to help you in selecting a health plan.

If you decide not to make an enrollment change this year, you don't need to complete the DPRS form. Please read both the form and the accompanying plan comparison booklet to make sure your current health benefits plan and option of coverage, especially prepaid plans, will still be available to you in 1992. If your plan is not listed, you must select another plan during this Open Season period (November 12 through December 9, 1991) to be assured of continued health benefits coverage.

Important. You should also carefully review the 1992 premium cost shown in the plan comparison booklet for your plan and option of coverage. There are only limited opportunities which permit you to change your enrollment outside of the Open Season. If you do not change your enrollment during the Open Season, you may not be eligible to change later, even if you do not wish to pay an increased premium cost for your enrollment.

Section I, Action. You may select either item 1 or item 2 below, but not both. Read the instructions carefully before making any decisions.

How to Change Health Plan Enrollment

Your account must be current before a change will be processed.

Section I, Action. Mark the Change of Enrollment block.

Section II, Enrollment Codes and Plan Names. Mark one block only in the Fee-for-Service Open Enrollment or Fee-for-Service Limited Enrollment columns, or enter the enrollment code and name of plan in the Prepaid Plan column. A list of the Prepaid Plans is included in the comparison booklet.

If you are changing your enrollment from self only to self and family, see Section III.

Section III, Dependents' Names and Dates of Birth. If you are changing your enrollment from self only to self and family, please list your eligible dependents and their dates of birth in Section III on the DPRS–2809 form. See "Who is Covered Under Your Enrollment" in the comparison booklet.

Section IV, Address Correction. If your address is incorrect on the enclosed form, go to Section IV, and enter the changes in the space provided. Mark a line through the erroneous information of your preprinted address. The address you provide here will be used by DPRS to mail all future correspondence, including health benefits information.

Section V, Authorization. Sign and date the form. Enter the daytime area code and phone number where you can be contacted to answer questions concerning the information on this form.

Return the form in the envelope provided. You will receive an acknowledgement letter confirming your change of enrollment.

How to Receive Additional Plan Information

Section I, Action. Mark the Receive Plans Brochures block.

Section II, Enrollment Codes and Plan Names. You may choose up to 5 plan brochures. Mark the block for each plan brochure you wish to receive in the Fee-for-Service Open Enrollment or Fee-for-Service Limited Enrollment columns, or enter the enrollment code and name of plans in the Prepaid Plan column. A list of the Prepaid Plans is included in the comparison booklet.

Section IV, Address Correction. If your address is incorrect on the enclosed form, go to Section IV, and enter the changes in the space provided. Mark a line through the erroneous information of your preprinted address. The address you provide here will be used by DPRS to mail all future correspondence, including health benefits information.

Section V, Authorization. Go to Section V. Sign and date the form. Enter the daytime area code and phone number where you can be contacted to answer questions concerning the information on this form.

Return the form in the envelope provided. Upon receipt of your form, we will mail to you a package with the brochures you requested and a form for your use if you wish to make an enrollment change.

Do not complete this section of the form if you are changing your enrollment and wish to obtain a brochure of your new plan for the upcoming year. Your new plan will send you a brochure when we notify them of your enrollment.

Additional Help. If you need assistance in completing your form, you may call the DPRS Billing unit for Open Season Information from 7:45 a.m. to 4:00 p.m. This is a Toll Call if you are calling long distance. The Open Season number is 1–504–255–5991.

Late Authorization. If you request plan brochures during the Open Season, you will be granted at least 31 days in which to review the brochures and return your enrollment change request to us.

Effective Dates of Open Season Changes. All enrollment changes will be effective January 1, 1992. If your change is processed before January 1, 1992, the coupons received in January will reflect the new premium. Otherwise, the new premium will be reflected in the coupons sent to you after the change is processed, retroactive to January 1992.

Identification Cards. These cards are issued by the health plans, not DPRS. It may take up to 3 months after DPRS has processed your Open Season change for you to receive your new identification card. Should you or your family require medical attention after January 1, but before you receive your new identification card, you may use the acknowledgement letter we send you as proof of your new coverage.

Acknowledgement Letters. If you made a change in your enrollment during the Open Season, a letter acknowledging your change will be mailed to you. You should keep this acknowledgement letter to use as verification of your new enrollment effective January 1, 1992.

Privacy Act Statement. The information you provide on the Health benefits registration Form is needed to document your enrollment in the Federal Employees Health Benefits Program under Chapter 89, Title 5, U.S. Code. This information will be shared with the health insurance carrier you select, so that they may (1) identify your enrollment in their plan, (2) verify your and/or your family's eligibility for payment of a claim for health benefits services or supplies, and (3) coordinate payment of claims with other carriers with whom you might also make a claim for payment of benefits. This information may be disclosed to other Federal agencies or Congressional offices which may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs, in addition, to the extent the information indicates a violation of civil or criminal law, it may be shared with an appropriate Federal, state, or local law enforcement agency. The law does not require you to supply all the information on the form, but doing so will assist in the prompt processing of your enrollment.

Public Burden Statement. We think this form takes an average 10 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the

completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project (3206–0141), Washington, DC 20503.

[FR Doc. 91–21928 Filed 9–11–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270–19, Rule 15b1–1 and Form BD]

Requests Under Review by Office of Mangement and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for OMB approval Rule 15b1–1 and Form BD, the form for registration with the Commission as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), in order to reflect proposed amendments to Form BD.

Approximately 2,500 respondents currently incur an estimated average of three burden hours to comply with Rule 15b1–1 and Form BD. The amendments to Form BD will not change the average number of burden hours required to comply with the rule or to complete the form.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–21951 Filed 9–11–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29652; File No. SR–CBOE–91–29]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Posting of Pre-Opening Market Quote Indications in Designated Options Classes

September 4, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add an interpretation to its existing Rule 6.1 which would allow Members, Designated Primary Market-Makers ("DPM") or Order Book Officials ("OBO") to give pre-opening option market quote indications for the purpose of providing information to the public regarding the probable opening market quotes for options on inactive series which, if confirmed, would decrease the time to complete an opening rotation. The new interpretation includes language which sets forth procedures to be followed in implementing the pre-opening indications.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule would allow members of a trading crowd to provide pre-opening option market quote indications based upon the anticipated opening price of the underlying security. The Equity Floor Procedures Committee ("EFPC"), Index Floor Procedures Committee ("IFPC"), Modified Trading System ("MTS") or the President of the Exchange will designate options classes that will be eligible for pre-opening option market quote procedures. The Exchange and Exchange Committees intend to designate as eligible all options classes whose underlying security is sold over-the-counter and those option classes whose underlying security shows little market volatility.[1]

For eligible options classes, the OBO or DPM will request market quote indications from the crowd before the Exchange opens at 8:30 a.m. Chicago Time ("C.T."), but no earlier than 8:15 a.m. (C.T.). If, after the underlying security has opened, and in no case earlier than 8:30 a.m. (CT), the members confirm the pre-opening option market quote indications, a simultaneous opening would take place. However, if the pre-opening option market quote indications are not confirmed, the OBO or DPM would conduct a regular opening rotation in that class pursuant to applicable Exchange rules. In addition, the proposal provides that the OBO or DPM must direct that an opening rotation take place if the following conditions exist: (1) The OBO or DPM fails to receive market quote indications for all series within a class; (2) the underlying security opens substantially higher or lower than the opening price anticipated by the members of the crowd providing the pre-opening market quote indications; [2] (3)

[1] The following criteria will be applied by the Exchange Committees to equity options traded upon the Exchange's option floor in reaching a determination that the option's underlying stock shows little market volatility: (1) The average difference between the closing price and the opening price of the underlying security measured daily over a two-month period must be ¼ point or less; and (2) the average daily volume of options contracts traded on the opening in the class over the same two-month period may not exceed 100 contracts. Once an option class has been designated as eligible for preopening procedures, it will remain eligible until the Exchange and the responsible Committee make a determination that it is no longer eligible. *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Howard Kramer, Division of Market Regulation, SEC, dated August 21, 1991 ("Kramer Letter").

[2] The Exchange intends that the term "substantially" shall mean a change of more than ¼

Continued

there are substantial options order imbalances; or (4) for such other reasons as may be determined appropriate by Floor Officials, the OBO, the DPM or the Exchange.[3]

The CBOE proposal is intended to benefit the market's participants by providing data as to where the option series may open as soon as it is available. This in turn may decrease the time spent in opening options classes and decrease the current influx of messages input into Exchange and industry computer systems as a result of the current 8:30 a.m. (CT) openings.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act. In that regard, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.

The Exchange states that the purpose of the proposed rule change is to decrease the amount of time required to obtain opening market quotations during the opening rotation. Under certain market conditions, such as the conditions that occurred during the October 1987 Market Break, it may take up to 45 minutes to obtain opening market quotations for all series of all classes of options traded in a particular pit. On a normal day, it can take up to 15 minutes to obtain opening market quotations for all series of all classes of options traded on the Exchange floor.

During a trading rotation, bids, offers, and transactions may occur only in one or a few specified options series at a time, and trading may not occur in any series until it has been reached in the rotation. All exchanges attempt to complete opening rotations as quickly as possible in order that free trading may commence shortly after the opening. Free trading is critical to the effectuation by options investors and market makers of certain option strategies, including hedging strategies that require positions to be taken in different series in the same class. Furthermore, customer orders received by an exchange after the opening of the series involved cannot be executed until after free trading commences. As a result, an order in a series that opened near the beginning of a lengthy rotation may not be executed until the opening rotation has concluded and free trading has begun.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[4] The Commission believes that the procedures proposed by the CBOE will remove impediments to and perfect the mechanism of a free and open options market by decreasing the time required to obtain opening market quotations and allowing free trading to commence as quickly as possible after the opening. Expedited free trading will allow market makers to engage in hedging strategies as soon as possible after the opening, and also will result in prompt execution of customer orders. In this regard, the CBOE proposal is consistent with a recommendation contained in The October 1987 Market Break Report by the commission staff, that the options exchanges should reexamine their rules governing opening rotations.[5] Moreover, the CBOE has designed procedures to ensure that pre-opening quote indications are not stale by the opening of trading in the underlying security, and would not result in executions that are inconsistent with the security's opening price.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the proposal is substantially similar to a submission by the Pacific Stock Exchange, Inc. ("PSE") previously approved by the Commission.[6] In addition, since there have been no adverse comments concerning the PSE's pre-opening quote rule and the present proposal, the Commission believes that good cause exists for approving the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–91–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Director.

[FR Doc. 91–21953 Filed 9–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission

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of a point in the opening price of the underlying security. See Kramer Letter, *supra* note 1.

[3] See letter from Joyce Deatrick Klouda, Staff Attorney, CBOE, to Jeffrey Burns, SEC, dated August 30, 1991 ("Burns Letter").

[4] 15 U.S.C. 78f (1982).

[5] The October 1987 Market Break at 8–22.

[6] See Securities Exchange Act Release No. 26068 (September 9, 1988), 53 FR 35945.

[7] 15 U.S.C. 78s(b)(1982).

("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

ALC Communications Corporation
Common Stock, $.01 par Value (File No. 7-7223)
Public Storage Properties XVIII
Series A Common Stock, $.01 Par Value (File No. 7-7224)
Vanguard Real Estate Fund I
Shares of Beneficial Interest, No Par Value (File No. 7-7225)
Vanguard Real Estate Fund II
Shares of Beneficial Interest, No Par Value (File No. 7-7226)
International Colin Energy Corporation
Rights to Subscribe for Additional Common Stock (File No. 7-7227)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 30, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21870 Filed 9-11-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

AT&T Capital Corporation
Yen/Deutsche Mark Cross Currency Warrants expiring October 30, 1991 (YDC WS) (File No. 7-7221)
U.S. Dollar/British Pound Cross Currency Warrants expiring December 14, 1992 (TDP WS) (File No. 7-7222)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 30, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21871 Filed 9-11-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Perking Family Restaurants L.P.
Limited Partnership Depositary Units (File No. 7-7228)
JHM Mortgage Securities L.P.
Preferred Units (File No. 7-7229)
American Adjustable Rate Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-7230)
CRI Insured Mortgage Association, Inc.
Common Stock, $.01 Par Value (File No. 7-7231)
CRI Liquidating REIT
Common Stock, $.01 Par Value (File No. 7-7232)
RPS Realty Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-7233)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 30, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21872 Filed 9-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18298; 812-7671]

American AAdvantage Funds, et al.; Application

September 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: American AAdvantage Fund (the "Trust"), AMR Investment Services, Inc. ("AMR") and any other open-end management investment companies that now or in the future are managed by AMR.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 18(f), 18(g) and 18(i) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the proposed issuance and sale of two classes of securities by any series of the Trust or any other investment company Applicant from: (1) Sections 18(f)(1) and 18(g) of the 1940 Act, to the extent that the proposed issuance and sale may result in a "senior security" under section 18(f) of the 1940 Act; and (2) section 18(i) of the 1940 Act to the extent that the different voting rights associated with each class of shares may be deemed to result in some shares

of stock issued by a registered management investment company having unequal voting rights.

FILING DATE: The application was filed on January 11, 1991, Amendment No. 1 to the application was filed on June 24, 1991 and Amendment No. 2 to the application was filed on August 20, 1991. By letter dated September 5, 1991, Counsel for applicants stated that applicants will file an additional amendment prior to the issuance of any order on the application, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, American AAdvantage Funds and AMR Investment Services, Inc., 4333 Amon Carter Blvd., Fort Worth, Texas 76155.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504–2259 or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is registered under the 1940 Act as an openend management investment company. The Trust currently offers shares of beneficial interest representing interests in five investment portfolios, each of which presently has a single class of shares outstanding: (1) The American AAdvantage Balanced Fund; (2) the American AAdvantage Equity Fund; (3) the American AAdvantage Limited-Term Income Fund; (4) the American AAdvantage International Equity Fund; and (5) the American AAdvantage Money Market Fund (the "Money Market Fund"). These portfolios, together with any other series of the Trust, or other investment company Applicant, established in the future, are collectively referred to herein as a "Fund" or the "Funds." It is presently contemplated that only the Money Market Fund will establish two classes of shares as described below; however, the exemptive relief requested herein would apply to any Fund.

2. AMR is the Manager of each Fund, the sole investment adviser of the Money Market Fund, and the sole active investment adviser to the American AAdvantage Limited-Term Income Fund. AMR is a wholly-owned subsidiary of AMR Corporation, the parent company of American Airlines, Inc. The assets of each of the Funds, other than the Money Market Fund and the American AAdvantage Limited-Term Income Fund, are allocated by AMR among certain investment advisers designated for that Fund.

3. Under the Administrative Services Agreement between the Trust and AMR with respect to the Money Market Fund, AMR provides administrative and management services to the Money Market Fund similar to those provided by AMR to the shareholders of the other Funds pursuant to the Shareholder Service Agreements described below. The fee payable under the Administrative services Agreement equals .05% of the Money Markets Fund's net assets on an annualized basis. Each shareholder of a Fund, other than the Money Market Fund, is required to enter into a Shareholder Service Agreement with AMR. Under this agreement, AMR provides or oversees on behalf of the shareholder's account certain administrative and management services (other than investment advisory and portfolio allocation services) for which each shareholder (and not the Fund) pays an annualized fee directly to AMR. This fee equals .30% of a shareholder's assets invested in each Fund. At its option, AMR can agree to accept a reduced fee from shareholders who make an initial investment of at least $10 million. When calculating a Fund's operating expenses or standardized performance information for purposes of including such expenses or information for purposes of including such expenses or information in a Fund's (a) registration statement, (b) sales literature or (c) advertisments, Applicants will reflect the maximum shareholder fee currently authorized by the relevant Fund.

4. The Trust intends to establish two classes of shares in the Money Market Fund and may establish two classes of shares in other Funds in the future. The existing class of shares in each of the Funds will be redesignated as Class A shares and will remain unchanged in all other respects. The Class A Shares will continue to be offered and sold only to institutional investors and to other investors making a minimum initial investment of at least $10 million in the Fund.[1] Included among the institutional investors are individual retirement accounts ("IRAs") or retirement plans that are subject to the Employees Retirement Income Security Act of 1974 ("ERISA") ("Retirement Plan Investors").

5. As is currently the case with respect to all Fund shares, both Class A and Class B Shares will be self-distributed by the Trust without the assistance of a principal underwriter or any other registered broker-dealer. The Class A shares will not be subject directly to a fee imposed under Rule 12b–1. However, the Trust has adopted a so-called "defensive" Rule 12b–1 plan with respect to its existing shares of the Funds, pursuant to which AMR is authorized to use any fees received by it under its other agreements with the Trust for distribution purposes. This plan will continue in effect under the proposed dual class arrangements with respect to the Class A shares, and is referred to herein as the "Class A Plan."

6. The new class of shares, the Class B Shares, will be offered and sold to natural persons with a lower initial minimum investment. The Funds anticipate that initial investments by Class B shareholders of at least $10,000, and subsequent investments of at least $250, will be required. Unlike the Class A shares, Class B shareholders of a Fund will be asked to adopt a Rule 12b–1 distribution plan (the "Class B Plan") which will provide for the Fund to compensate AMR in an amount equal to .25% of the Class B assets of that Fund, on an annualized basis, for distribution and distribution-related activities. If the actual distribution-related expenditures incurred by AMR exceed the fees under the Class B Plan, AMR will have to pay the excess from its own resources, while if the fees are greater than the expenditures, AMR will earn a profit.

7. One direct distribution expenditure expected to be incurred under the Class B Plan will be the purchase of travel awards credits ("Credits") from the AAdvantage Travel Awards Program (the "Program"), which is sponsored by American Airlines, Inc. ("AA"). The Credits will be awarded at an annual

[1] AMR retains discretion to waive the $10 million minimum investment requirement for individual investors.

rate of one mile for each $10 invested in a Fund by such shareholder. Credits will be calculated and awarded quarterly based upon the average daily account balance of a Class B shareholder's account. The Credits can be redeemed in exchange for various travel services and other services or products. Each Class B shareholder who is not yet a Program member will become a member by virtue of completing a Fund account application form, unless a Class B shareholder declines to accept Credits. AMR will purchase the Credits from AA in connection with its participation in the Program.

8. In addition to the purchase of Credits, other marketing expenses that AMR may incur under the Class B Plan include general advertising and the costs of payments to third parties who would provide distribution-related shareholder services to Class B shareholders.

9. Presently, it is intended that the Retirement Plan Investors will be eligible to purchase Class A Shares, as discussed above. However, the Funds reserve the right to alter the categories of offerees so that such Investors may, in the future, be eligible to purchase Class B, rather than Class A, Shares. In the event the Funds made such a modification, the Retirement Plan Investors would be advised that they should consider declining the Credits due to a Department of Labor ("DOL") interpretation. This interpretation suggests that the acceptance of benefits such as Credits by the Retirement Plan Investment might jeopardize the favorable tax treatment afforded to these accounts. In the event of a change in this interpretation, the advice to the Retirement Plan Investors would be modified accordingly.

10. If the Funds decide to offer Class B Shares, in lieu of Class A Shares, to the Retirement Plan Investors, any prospectus through which the Funds' shares are offered and any advertising or sales literature for the Funds will, at a minimum, disclose the possible tax implications of acceptance of Credits by such Investors and will disclose that, regardless of whether the Retirement Plan Investors accept the Credits, they will bear the full Rule 12b–1 fee assessed on Class B Shares, which will compensate AMR for its distribution activities in connection with the Funds, including the purchase of the Credits. In addition, any salesperson representing the Funds will, at a minimum, discuss the possible tax implications of acceptance of the Credits with potential Retirement Plan Investors before such investors purchase Class B Shares and will explain to such investors that, regardless of whether they accept the Credits, they will bear the full Rule 12b–1 fee assessed on Class B Shares, which will compensate AMR for its distribution activities in connection with the Funds, including the purchase of the Credits.

11. The net asset value of shares of each class of the Money Market Fund will be calculated in accordance with the amortized cost method of valuation to enable that Fund to maintain a constant $1.00 per share net asset value. The gross income of the Money Market Fund and any other Fund that values its portfolio in accordance with Rule 2a–7 will be allocated on a *pro rata* basis to each outstanding share in the Fund regardless of class, and all expenses incurred by such a Fund will be borne on a *pro rata* basis by such outstanding shares, except for the payments that are made under the Class B Plan and, possibly, Class Expenses (as described in condition 1, below). The gross income and all expenses, except for the payments that are made under the Class B Plan, and, possibly, Class Expenses, of each of the other Funds will be allocated between Class A and Class B on the basis of their relative net assets.

12. Because of the payments under the Class B Plan and Class Expenses that may be borne by such class of shares, the net income of and dividends payable to the Class B Shares will be lower than the net income of and dividends payable to the Class A Shares of the same Fund. Dividends paid to each class of shares of a Fund will, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the fees payable under the Class B Plan and any Class Expenses, will be determined in the same manner and paid in the same amounts. In the case of each of the Funds that do not maintain a constant net asset value per share and do not declare dividends on a daily basis, the net asset value per share of the Class A and Class B shares of each Fund will vary.

Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting the Funds' proposed issuance and sale of Class A and Class B Shares representing interests in the same Fund from: (1) Sections 18(f)(1) and 18(g) of the 1940 Act to the extent that the proposed issuance and sale may be deemed to result in a "senior security," and therefore be prohibited by section 18(f)(1); and (2) section 18(i) of the 1940 Act to the extent that the different voting rights associated with each class of shares may be deemed to result in some shares of stock issued by a registered management investment company having unequal voting rights. Applicants believe that the proposed allocation of expenses relating to the Class B Plan and voting rights relating to the Class A Plan and the Class B Plan is equitable and will not discriminate against any group of shareholders. Investors purchasing Class B Shares, and receiving the services provided under the Class B Plan, will bear the costs associated with such services. Class A and Class B investors will also each enjoy exclusive shareholder voting rights with respect to matters affecting the Class A Plan and the Class B Plan, respectively.

2. The Applicants also assert that, under the proposed arrangement, all shares in the Money Market Fund will bear, *pro rata*, all of the kinds of expenses of the Fund, except payments under the Class B Plan and Class Expenses; all shares of each of the other funds will bear all expenses, except payments under the Class B Plan and Class Expenses, on the basis of the relative net assets of the two classes. As a result, the aggregate expenses attributable to a Class B share of one Fund will be higher than those attributable to a Class A share of the same Fund. However, by allowing the Funds to create the Class A and Class B Shares and to allocate payments under the Class B Plan and Class Expenses as proposed, the Funds (and their shareholders) will save the organizational and other continuing costs that would be incurred if the Funds were required to establish new separate investment portfolios. Moreover, to the extent that the Funds are able, through the proposed arrangement, to expand their current shareholder base, their shareholders, irrespective of class, will benefit to the extent that such Funds' *pro rata* operating expenses are lower than they would be otherwise.

3. The proposed arrangement described in the application does not involve borrowings and does not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of shares of a Fund, because all shares in the Money Market Fund will participate *pro rata* in all of the Fund's appreciation, income and expenses (except for payments under the Class B Plan and Class Expenses) and all shares in each of the other Funds will participate in all appreciation, income and expenses (except for payments under the Class B Plan and Class

Expenses) on the basis of the relative net assets of the classes.

4. The Applicants do not believe that their proposal to have AMR award Advantage Program Credits to Class B shareholders and to allow the Funds to compensate AMR under the Class B Plan for its distribution-related activities with regard to the Funds, including its costs in purchasing the Credits from AA, creates any additional issues hereunder. The Applicants believe that it is appropriate for AMR to incur such expenses under a plan of distribution adopted pursuant to Rule 12b–1. Moreover, the Applicants do not believe that the award of the Credits to Class B investors, and not to Class A investors, could be construed to create a senior security within the meaning of section 18(f) of the 1940 Act, since they assert that the award of the Credits does not constitute the distribution of assets or the payment of a dividend.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the Class A and Class B Shares of the same fund will relate solely to: (a) The impact of payments under the Class B Plan, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) the fact that the Class A and Class B shareholders will each vote separately with respect to the Class A Plan and the Class B Plan, respectively; (c) the designation of each such class; (d) certain Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agent fees attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) trustees' fees incurred as a result of issues relating to one class of shares; and (e) the different exchange privileges of each class of shares.

2. The trustees of the Trust, including a majority of the independent trustees, will approve the dual class system prior to implementation of that system by a particular Fund. The minutes of the meetings of the trustees of the Trust regarding the deliberations of the trustees with respect to the approvals necessary to implement the dual class system will reflect in detail the reasons for the trustees' determination that the proposed dual class system is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees including a majority of the Trustees who are not interested persons of such Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Funds that have established Class A and Class B shares for the existence of any material conflicts between the interests of the Class A and Class B shareholders. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Funds' manager, AMR, will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, AMR, at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. The Class B Plan will be submitted to the public shareholders of Class B Shares of a Fund for approval at the next meeting of shareholders after the initial issuance of shares of such class. Such meeting is to be held within sixteen months of the date that the registration statement relating to such class first becomes effective, or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

6. The trustees of the Trust will receive quarterly and annual statements concerning distribution expenditures for the Class A and Class B Shares complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by the Trust with respect to each class of a Fund's shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Trust with respect to the other class in the same Fund, except that any payments pursuant to the Class B Plan will be borne by Class B shares and any Class Expenses may be borne by the applicable class of shares.

8. The methodology and procedures for calculating the net asset value, dividends and distributions of the Class A and Class B Shares and the proper allocation of expense between those Classes have been reviewed by an expert (the "Expert") who has rendered a report to the Trust, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30 (b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports

will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defend and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The Trust has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions of the Class A and Class B Shares of a fund and the proper allocation of expenses between such classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if this representation is not concurred by the Expert or an appropriate substitute Expert.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the dual class system will be set forth in guidelines which will be furnished to the trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether both classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to both classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to either class of shares, it will also disclose the respective expense and/or performance data applicable to both classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence (a) in any particular level or type of Rule 12b–1 plan or other payments that Applicants may make in reliance on the exemptive order, or (b) in the manner in which fees are assessed or approved under the Shareholder Service Agreements or the level of such fees.

13. The Money Market Fund, and any other Fund relying on this order in the future that relies upon Rule 2a–7 under the 1940 Act, will have more than one class of shares outstanding only when and for so long as that Fund declares its dividends on a daily basis, accrues its payments for the Class B Plan and payments of Class Expenses daily, and has received undertakings from the persons that are entitled to receive payments under the Class B Plan and payments of Class Expenses, waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any such class of shares on any day do not exceed the income to be accrued to such class on that day. If such waivers are not sufficient to prevent a class's expenses from exceeding its gross income on any given day, AMR will reimburse the Fund for the excess within five business days. In this manner, the net asset value per share for all shares in such a Fund will remain the same.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–21952 Filed 9–11–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1477]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on September 25, 1991, at the Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, from 1:30 p.m. to 4:30 p.m. in the 8th Floor Conference Room.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is to continue preparations for the November meeting of Study Group 4 in Geneva.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Hans Weiss, Communications Satellite Corporation, 22300 Comsat Drive, Clarksburg, MD 20871, phone (301) 428–4777.

Dated: August 26, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91–21967 Filed 9–11–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD11–91–10]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS):

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of Certificate of Alternative Compliance for vessel.

SUMMARY: This notice provides notification of the granting of a Certificate of Alternative Compliance for a small passenger (dinner excursion) vessel. The vessel cannot fully comply with certain provisions of Annex I of the 72 COLREGS without interfering with its operation.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Robert Shilland, Eleventh Coast Guard District, Marine Safety Division, Union Bank Building, Suite 709, 400 Oceangate, Long Beach, CA 90822. Telephone (213) 499–5334.

SUPPLEMENTARY INFORMATION: Under the provisions of section 1605 (c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register** a listing of any vessel granted a Certificate of Alternative Compliance. A certificate is issued on a determination that a vessel cannot fully comply with the light, shape, and sound signal provisions of the 72 COLREGS without interfering with the special function of the vessel and, instead, meet alternative requirements.

The vessel listed below does not comply with annex I, section 3.(a) of the 72 COLREGS in that its forward masthead light is located 65' 10" forward of the aft mast and 96' 6" aft of the stem. Full compliance would require the horizontal distance between its forward masthead light and the aft masthead light to be not less than one half of the length of the vessel, with the forward masthead light placed not more than one quarter of the length of the vessel from the stem. Complying with this requirement would interfere with the operator's visibility and possibly impair the operator's night vision. Accordingly, the vessel has been issued a Certificate

of Alernative Compliance, pursuant to Rule 1(e) of the 72 COLREGS.

M/V MONTE CARLO, O.N. 977138

Dated: August 23, 1991.

G.A. Casimir,

Captain, U.S. Coast Guard, Chief, Marine Safety Division, Eleventh Coast Guard District.

[FR Doc. 91-21949 Filed 9-11-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Cumberland and Harnett Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cumberland and Harnett Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Nicholas L. Graf, P.E., Division Administrator, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4346.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposal to improve traffic flow between NC 87/24 and the proposed US 13/NC 24 project north of Fayetteville, North Carolina. Improvements to the corridor are considered necessary to increase safety and traffic service from the US 13/NC 24 project and the City of Fayetteville around the Town of Spring Lake. The proposed action would be the construction of multi-lane, divided, controlled access highway, on a new location for a distance of about 11 miles.

Alternatives under consideration include: (1) The "No-Build" alternate, which includes: Transportation Systems Management alternative; Mass Transit alternative; and "do-nothing" alternative, and (2) build alternatives for a controlled access highway on new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include: the distribution of newsletters to interested parties, along with public meetings and public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Robert L. Lee,

District Engineer, Raleigh, NC.

[FR Doc. 91-21919 Filed 9-11-91; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS-AP-NO. 3066 and 3088]

Consolidated Rail Corp.; Public Hearings

The Consolidated Rail Corporation (Conrail) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance and removal of the automatic block signal system on portions of its system.

Under Block Signal Application 3066, Conrail seeks approval to: discontinue and remove the automatic block signal system on the single main track between "Warsaw" Interlocking (milepost 358.7) and Valparaiso, Indiana (milepost 420.3); classify the main track as a secondary track and operate under manual block signal rules; and install block limit stations at "Saw" (milepost 358.7) and "Valpo" (milepost 420.3).

Under Block Signal Application 3088, Conrail seeks approval to: discontinue and remove the automatic block signal system on the single main track from Crestline, Ohio (milepost 189.0) to Fort Wayne, Indiana (milepost 319.2) and from "Junction" Interlocking (milepost 321.1) to Warsaw, Indiana (milepost 358.7); discontinue the automatic interlocking at "Estry" (milepost 287.8) and replace with stop signs; discontinue and remove the remotely controlled manual interlockings at "CP West Yard" (milepost 191.2) and "CP East Colsan" (milepost 198.6); convert all remaining switches to hand operation; classify the main track as a secondary track; and operate under manual block signal rules.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Tuesday, October 8, 1991, in room 1134 of the Federal Court House located at 1300 South Harrison Street in Fort Wayne, Indiana. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 6, 1991.

Walter C. Rockey,

Acting Associate Administrator for Safety.

[FR Doc. 91-21911 Filed 9-11-91; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. P-87-7W; Notice 1]

Transportation of Hazardous Liquids By Pipeline, Petition for Waiver; Exxon Pipeline Co.

The Exxon Pipeline Company (Exxon) has petitioned the Research and Special Programs Administration to waive compliance with the hydrostatic test and records retention requirements of 49 CFR 195.302 and 195.310. The petition pertains to two short segments of a pipeline in Harris County, Texas that are owned by Exxon, leased by Shell Chemical Company and operated by Shell Pipe Line Corporation. The bi-directional pipeline transports ethylene in a state that meets the definition in § 195.2 of a highly volatile liquid (HVL). The pipeline runs between the Shell Deer Park Plant, located south of the

Houston Ship Channel, and the Exxon Mont Belvieu Plant, located north of the Houston Ship Channel. Construction of the 8-inch 18.39 mile pipeline was completed in 1969, and the pipeline was placed in HVL service that same year.

In 1987, Exxon became aware that the pipeline was being operated as an interstate pipeline connected to an out-of-state system. Section 195.302(b) requires onshore steel interstate pipelines constructed before January 8, 1971, and in HVL service before September 8, 1980, to be qualified by hydrostatic testing, or reduction in maximum operating pressure. Section 195.310 requires a record be made of each required test and be retained for as long as the facility is in use. In 1987, Exxon conducted a review of the pipeline's hydrostatic test records to ensure compliance with § 195.310 requirements for retention of the records of the latest hydrostatic test required by subpart E of part 195. The review disclosed that proper test records existed for 18.37 miles of the pipeline. However, records could not be located for a 53-foot tie-in segment (just south of the channel) and a 27-foot tie-in segment (just north of the channel), totaling 80 feet, or 0.02 miles.

Exxon's petition for waiver provided the following information to support their position that granting a waiver is in the best interest of pipeline safety:

1. Exxon's construction specifications and applicable industry codes, in effect in 1969, required hydrostatic testing of newly constructed hazardous liquid pipelines at 125 percent of maximum operating pressure for a 24-hour duration. Therefore, since those records are currently available to 18.37 miles or 99.89 percent of the pipeline, Exxon believes that the 53-foot and 27-foot tie-in segments were also tested to the same requirements.

2. Since the pipeline has been in service since 1969 without any known failures, and because the maximum actual hoop stress in the two pipeline segments will not result in a hoop stress that exceeds 45 percent of the specified minimum yield strength (SMYS) of the pipe (§ 195.406(a)(1) allows hoop stress of 72% SMYS), the pipe segments in question have a larger than required margin of safety.

3. Internal corrosion is not a problem because the ethylene transported is non-corrosive. The pipeline is cathodically protected and the pipe to soil potential reports do not indicate a problem with external corrosion.

4. The potential for risk to persons resulting from a pipe failure is unlikely because the two segments are located in a pipeline corridor and there are no homes, businesses or other occupied buildings of any kind within 1500 feet of the 53-foot segment (south of the ship canal) or within 3000 feet of the 27-foot segment (north of the ship channel).

Based on the above information from Exxon, the Research and Special Programs Administration (RSPA) accepts the argument that the two tie-in segments were hydrostatically tested to the same Exxon construction specifications and applicable industry codes as the rest of the pipeline. Therefore, RSPA sees no reason to grant the request for a waiver from compliance with the § 195.302 hydrostatic test requirements. Rather, RSPA sees the need to only respond to the noncompliance with the records retention requirements of § 195.310.

Exxon's information indicates proper compliance with the test record requirements of § 195.310 for all but these two segments totaling 80 feet (0.08%) of the pipeline. Exxon's information further indicates that the pipe segments are to continue operating at low hoop stress; there are no indications of internal or external corrosion; the two segments are not near homes or occupied buildings; and no known failures have occurred in the two segments. Based on the information submitted by Exxon, there appears to be reasonable evidence that the 27-foot and 53-foot tie-in segments were pretested before installation at these locations, and that those test records may not have been filed or may have become lost. In view of these reasons, it appears that a waiver of compliance with the requirements of § 195.310 for these tie-in segments is not inconsistent with pipeline safety and as a consequence, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, room 8417, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590.

All comments received before October 15, 1991 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in room 8419 between the hours of 8:30 a.m. and 5 p.m. before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC on September 9, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-21938 Filed 9-11-91; 8:45 am]

BILLING CODE 4910-60-M#

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0717.

Form Number: IRS Form W-4S.

Type of Review: Extension.

Title: Request for Federal Income Tax Withholding From Sick Pay.

Description: Section 3402(o) of the Internal Revenue Code extends income tax withholding to sick pay payments made by third parties upon request of the payee. The information is used to determine the amount to be withheld from the third-party sick pay payments.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeping:

Recordkeeping—40 minutes
Learning about the law or the form—6 minutes
Preparing the form—25 minutes
Copying, assembling, and sending the form to IRS—11 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 685,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Managemen.

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-21868 Filed 9-11-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

September 6, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1034.

Form Number: IRS Form 8582-CR.

Type of Review: Revision.

Title: Passive Activity Credit Limitations.

Description: Credits from passive activities, to the extent they do not exceed the tax attributable to net passive income are not allowed. Form 8582-CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return. Worksheets 1, 2, 3, and 4 in the instructions are used to figure the amounts to be entered on lines 1, 2, 3, and 4 of Form 8582-CR and worksheets 5 through 8 are used to allocate the credits allowed back to the individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 900,000.

Estimated Burden Hours Per Respondent/Recordkeeping:

Recordkeeping—2 hours, 5 minutes
Learning about the law or the form—4 hours, 19 minutes
Preparing the form—3 hours, 4 minutes
Copying, assembling, and sending the form to IRS—2 hours, 1 minute

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 5,569,200 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-21946 Filed 9-11-91; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Small Group Study Programs in American Studies for Foreign Secondary School and University-Level Educators

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Division for the Study of the U.S., Office of Academic Programs, U.S. Information Agency, invites Washington-based programming institutions to submit proposals to coordinate and implement five thirty-day multi-regional study programs in American studies. Each of the five programs will include fifteen foreign participants. These programs will take place in the period from late March to early November of 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. est on Friday, October 25, 1991. Faxed documents will not be accepted, nor will documents postmarked on October 25, 1991, but received at a later date. It is the responsibility of each grant applicant to ensure that the proposals are received by the above deadline. Grants should begin on or about January 15, 1992.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Small Group Study Programs in American Studies, Office of the Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: To request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information, interested organizations or institutions should contact: Richard Taylor, U.S. Information Agency, Office of Academic Programs, Division for the Study of the U.S., E/AAS—room 256, 301 4th Street, SW., Washington, DC 20547, Telephone: 202-619-4578.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright Hays Act). The purpose of the act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity of American political, social, and cultural life.

The Division for the Study of the U.S. provides opportunities for foreign education ministry officials, teacher trainers, textbook writers, and curriculum developers to receive information, training, and resource materials which will enable them to enhance or update what is taught about the U.S. in the secondary schools and teacher training institutions of their home countries. The Division also provides opportunities for university teachers of interdisciplinary American studies courses, American history and political science to update their knowledge of contemporary events and issues in American society. All participants will be competent in the English language.

Project Objectives

The objectives of the project are as follows: (1) To foster a greater understanding of historical and contemporary American society, culture, and institutions, and (2) to provide information and appropriate resource materials that will enhance participants' ability to develop up-to-date, balanced textbooks and curricula for teaching about the U.S. in educational institutions abroad.

Project Description

Three of the five study programs will be designed for Inspectors of English and other education ministry officials responsible for determining the content of textbooks and curricula, teacher

trainers, and textbook writers and curriculum developers in the field of teaching English as a foreign language (TEFL) at the secondary level. These programs should focus on incorporating American studies cultural content into secondary-level English teaching courses, and the use of teaching materials with a U.S. emphasis.

One of the five study programs will be designed for textbook writers, teacher trainers and curriculum developers involved in secondary-level social science education, including history and geography. Special emphasis should be placed on American studies source materials and their use in the writing of history, geography, and social studies textbooks and curricula. Programming on the American political process, notably the role of the U.S. Constitution (especially the Bill of Rights), should be included.

The remaining program will be designed for university professors involved in teaching courses in interdisciplinary American studies, American history, or American political institutions. This project should offer "advanced American studies programming," and assume that the participants are already knowledgable about basic American history and institutions. A comparative perspective would be appropriate for this group, as would a greater discussion of historical and contemporary issues in American society, government, and law.

Project Guidelines

Each of the five programs will begin with an initial program orientation and introductory lectures will be held in Washington, DC. Each program will include two main academic modules, each approximately seven days in length. The first module will be an intensive, graduate-level seminar at a major university, covering a number of interdisciplinary themes related to historical and contemporary American culture, society, and institutions. Current topics and issues should be included in the seminar. The second module will take place at a different university, institution, or other location appropriate to the specific theme of the program, preferably situated in another region of the country than that of the first module. This section of the project should provide additional American studies programming, exploring themes and issues which were not covered in the first academic module. The two academic modules are to be followed by at least one other travel segment to a different section of the U.S., in order to further expose the participants to American regionalism and cultural diversity. The programs will end in Washington, DC, with a briefing at USIA headquarters and a final project evaluation session.

Proposed Budget

Proposals must include a comprehensive line item budget, for which specific details will be supplied in the application packet available for the Division for the Study of the U.S.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligibile if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligibile proposals will also be reviewed by the Agency's Office of the General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

(1) Quality and imaginative design of the project;

(2) Quality, rigor, and appropriateness of proposal with regard to stated objectives of the project;

(3) Clear evidence of the ability to deliver a substantive and high-quality American studies program; experience with foreign educators is desirable;

(4) Provision for a useful evaluation at the conclusion of the program;

(5) Evidence of strong administrative and managerial capabilities for academic exchange programs, with specific discussion of how administrative and logistical arrangements will be undertaken;

(6) The experience of professionals and staff assigned to the program;

(7) The availability of resources for the Washington-based orientation and evaluation segments, and for the two university-based academic seminar components;

(8) A well-thoughtout and comprehensive cultural tour to complement the academic segments;

(9) Cost-effectiveness.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 15, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 23, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-21998 Filed 9-11-91; 8:45am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 177
Thursday, September 12, 1991

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 44125 Friday, September 6, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern time) Tuesday, September 17, 1991.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

CHANGE IN THE MEETING: The meeting scheduled for September 17, 1991 has been postponed until Tuesday, October 1, 1991 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–7100.

Dated: September 10, 1991.

Frances M. Hart,

Exectuive Officer, Executive Secretariat.

[FR Doc. 91–22076 Filed 9–10–91; 2:19 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 17, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

MATTER TO BE CONSIDERED: Analysis of Comments on Association of State Democratic Chairs' Rulemaking Petition.

DATE AND TIME: Tuesday, September 17, 1991, To Be Convened After the Open Meeting.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 19, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

STATUS: This meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Gephardt for President Committee—Request for Oral Presentation
Advisory Opinion 1991–27: Mr. Lance Olson on behalf of the California Democratic Party
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–22111 Filed 9–10–91; 2:27 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 18, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 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.

Dated: September 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–22113 Filed 9–10–91; 3:11 p.m.

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 17, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5299C Safety Recommendations Program Additions: "Most Wanted" List.
5489A Aviation Accident Summary Report: Mid-Air Collision Involving Lycoming Air Service Piper Aerostar and Sun Company Aviation Department Bell 412, Merion, Pennsylvania, April 4, 1991.
5381A Marine Accident Report: Collision of Greek Tankship SHINOUSSA with U.S. Towboat CHANDY N and Tow, Galveston Bay, Texas, July 28, 1990.

NEWS MEDIA CONTACT: Telephone (202) 382–6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 6, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–22080 Filed 9–10–91; 2:19 pm]

BILLING CODE 7533–01–M

federal register

Thursday
September 12, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

48 CFR Parts BIA 1401 to 1499
Acquisition Regulations; Buy Indian Act; Procedures for Contracting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Parts BIA 1401 to 1499

Acquisition Regulations; Buy Indian Act; Procedures for Contracting

RIN 1076-AC50

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule to govern the implementation of section 23 of the Act of June 25, 1910, 25 U.S.C. 47 (the "Buy Indian Act"), as amended. This proposed rule supports the policy and describes the procedures of the Bureau of Indian Affairs in its commercial acquisition relationships with self-certified eligible Indian economic enterprises.

DATES: Comments must be received on or before January 10, 1992.

ADDRESSES: Written comments should be directed to the Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, MS-334A-SIB, 1849 C Street, NW., Washington, DC 20240, (202) 208-2825.

FOR FURTHER INFORMATION CONTACT: Kimberly Romine or Frances Meckel, Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, MS-334A-SIB, 1849 C Street, NW., Washington, DC 20240, (202) 208-2825.

SUPPLEMENTARY INFORMATION: This proposed rule is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual, Chapter 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is section 23 of the Act of June 25, 1910 (25 U.S.C. 47), as amended.

The Bureau of Indian Affairs published proposed rules in the **Federal Register** on three prior occasions in 47 FR 44678, 49 FR 45187, and 53 FR 24738. Public comments received by the Bureau of Indian Affairs were reviewed, addressed in succeeding editions, and incorporated herein, where applicable.

The Assistant Secretary—Indian Affairs has encouraged major initiatives for economic development and employment of Indian persons, such as reducing the percentage of Indian ownership of Indian economic enterprises from 100% to 51%. In support of these initiatives, the previously proposed rules were rewritten and are published herein as proposed rules.

This proposed rule formalizes an administrative procedure for all Bureau acquisition activities/locations to be applied uniformly for self-certified eligible Indian economic enterprises which respond in an offer to specific solicitations set-aside under the Act and this part.

The authors of this document are: Dr. Peter A. Campanelli (retired), Ms. Kimberly Romine, and Ms. Frances J. Meckel, Division of Contracting and Grants Administration, Bureau of Indian Affairs; and, Mr. William Opdyke, Acquisition and Assistance Division, Bureau of Reclamation; U.S. Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The collections of information contained in this rule of the clauses referenced in Section BIA 1480.601 regarding compliance with Section 7(b) of Pub. L. 93-638 (25 U.S.C. 452) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0019. In addition, the contract office requires use of the requirements in SF-129, Solicitation Mailing List Application; and may require use of the SF-254, the Architect-Engineer and Related Services Questionnaire, and SF-255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items for collections of information have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned the OMB clearance numbers 9000-0002, 9000-0004, and 9000-0005 respectively. The information collection requirements contained in 48 CFR Part 1452.280-2, 1452.280-4 and BIA 1480.201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Indian set-aside program awards under the Buy Indian Act (and the proposed rule) are commercial contracts. Unlike Bureau awards to tribal organizations under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), commercial contracts are governed by the Federal Acquisition Regulation (FAR) and relevant Departmental and BIA directives.

Title 48, Code of Federal Regulations, encompasses all Federal commercial acquisitions in its parts 1-53. These parts apply to all commercial contracts, and include Buy Indian Act awards. They are mandatory for the Bureau and cannot be excepted by any Federal official.

A total of twenty-five written comments were received from external sources regarding the proposed rule. Initially, we will address some of the public comments that touched on Federal acquisition regulations rather than on Bureau policy. Some comments expressed opposition to the general topic of the percentages of subcontracting expressed in the language in proposed section BIA 1452.280-3 and in BIA 1480.602. Some respondents believed the percentages stated were too high for Indian economic enterprises. The percentages listed in the proposed rule are required for inclusion by FAR 52.219-14 and apply to all commercial contracts.

Section 7(b) of Public Law 93-638, as implemented by Department of the Interior Acquisition Regulation 1452.204-71, applies the Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. This principle is reiterated in this rule in BIA 1480.503(c); BIA 1452.280-2(c) (2), (3), and (4); BIA 1480.601; and, in BIA 1480.701(c).

Several comments stated concerns regarding a possible inconsistency in the proposed rule regarding small business set-asides; specifically, the relationship of the Act with regard to eligible Indian enterprises and the Order of Precedence in appendix A and the requirements in the proposed section BIA 1480.503(b). The Bureau must adhere to the Small Business Act Requirements, as it governs small purchases, and at the same time continue its policy of utilizing the Buy Indian Act. To this end, it has attempted to join the two requirements in the proposed section BIA 1480.503(b). When the Bureau Contracting Officer cannot make an advance determination of a potential award as an Indian small business set-aside under the Buy Indian Act, the Bureau is required to follow the order of preference in the Federal Acquisition Regulation (see FAR 8.001).

If an award is not or cannot be made to an eligible Indian firm that is responsible, responsive and is price reasonable to the Bureau solicitation, the set-aside notice is cancelled and other small business sources are sought as defined in Attachment 1. However, the Bureau may not move from a Buy Indian Act set-aside to full and open competition without first giving consideration to other authorized procurement set-aside programs.

Several comments were received regarding the language in proposed section BIA 1480.504–1(b)(14) wherein the Bureau Contracting Officer would provide written notice to the Indian governing body when a proposed set-aside involved services to be performed in whole or in part on land of that governing body. The objection focused on the Bureau notifying the involved tribe at the same time that the synopsis notice is published in the Commerce Business Daily (CBD). If a Tribal resolution was passed opposing the set-aside intention, such Bureau action could require much unnecessary effort and expense on the part of a non-tribal Indian business firm in preparing a bid or proposal. This time and expense could be eliminated if the Indian business firms knew of the tribe's possible resolution of nonsupport for the set-aside approach. The Bureau believes it is required by Public Law 93–638, as amended by Public Law 100–472, to advise a tribe of any work that will be performed within the boundaries of its tribal lands. If the tribe does not (1) give a negative response to the notice or (2) advise the Bureau of its intent to contract for the program within 15 calendar days from the date of publication in the Commerce Business Daily notice of the solicitation, the Bureau will then proceed with the solicitation. The Bureau believes this change addresses the concern expressed by commentors and honors the spirit of Public Law 93–638 as amended by Public Law 100–472.

A concern was expressed on the general topic of roads construction in relationship to the Indian set-aside program under the Buy Indian Act. The language in proposed section BIA 1480.401(b) implements the decision of the Supreme Court in *Andrus* v. *Glover*, 446 U.S. 608, 27 May 1980, which upheld an Oklahoma Court's decision that the Bureau could not use the Buy Indian Act to contract for construction. This prohibition was partially removed in 1983 with the passage of Public Law 97–424 (the Surface Transportation Act of 1983). However, the injunction which was placed on the Bureau's authority to use the Buy Indian Act for road construction services was not removed for the State of Oklahoma and any other type of general construction in any State. Therefore, all such "restricted" construction is outside the scope of the Buy Indian Act set-aside program and is prohibited by law.

One comment expressed opposition to the proposed rule definition for *Indian* (BIA 1452.280–4 and 1480.201), and stated an opinion that the term in the rule should incorporate a quarter-degree blood requirement as a requirement for being an enrolled tribal member. The commentor appears to have mixed two distinct issues. Tribes may set a blood quantum for membership, and many have. In some instances tribes, and the Bureau, have used the degree of Indian or tribal blood as one factor in establishing the relative priorities among eligible participants. However, the Bureau cannot impose a blood quantum requirement for initial eligibility for its programs unless the legislation authorizing the program allows it. The Bureau programs are available to all tribal members regardless of blood degree. The Bureau defers to tribal governments in the setting of the tribe's own standards for enrollment and membership so long as the standards reflect a meaningful bilateral, political relationship between the tribe and its members and they do not reflect a purely racial relationship.

Another comment expressed disagreement with the proposed rule definition of *Indian land* (BIA 1480.201), citing considerating for the term *Indian country*, as found in 18 U.S.C. 1151. The purpose of defining the term *Indian land* is to assist in determining when the Indian preference clauses set forth in the Department of the Interior Acquisition Regulation (DIAR) are required to be inserted into a Buy Indian Act set-aside contract under section BIA 1480.601(a) of the rule. In contrast, the term *Indian country* defines Federal criminal jurisdiction in Indian areas and contains references to *dependent Indian communities* and to *Indian allotments* which are inappropriate to determine the applicability of Indian preference clauses. Moreover, several comments were directed to the language in proposed section BIA 1480.401(b) with regard to construction. The Bureau has changed the language to comply with FAR 6.1 and 6.2, as applicable to set-aside awards.

The language in proposed section BIA 1480.902 deals with time-frames regarding Bureau receipt of a protest from an interested party. Some comments stated that the deadlines were too short to permit lodging a protest. The Bureau disagrees with the idea and has used the time-frames for small business set-aside awards protests, referenced in FAR 19.302.

The following statements seek to explain Bureau policy determinations, as expressed in the rule, separate from those Federal requirements outlined above in addressing some of the comments.

Three related items contained in the proposed rule were commented on: (1) Allowing more parties to protest a proposed or actual award in proposed section BIA 1480.901; (2) expanding the definition of *intereted parties* (BIA 1480.201) who may participate in a protest; and (3) lengthening the time available to interested parties to lodge a protest (BIA 1480.902(c) (1) and (2)).

Some comments recommended that the term *interested party* (which could protest an award) be expanded to include Indian tribes, Tribal Employment Rights Offices (TERO's), and Indian national professional/technical groups. The Bureau does not agree. The term *interested party* involves only an actual or prospective offeror to a Bureau solicitation under the Act whose direct economic interest would be affected or impacted by the award. The Bureau believes, with its proposed self-certification process for self-declared eligibility, that there will be protests lodged to question eligibility as an Indian economic enterprise. In fairness to those offerors who submitted bids/proposals in response to a Bureau solicitation, only their direct economic interests are or would be affected. Thus, it is left to these offerors to lodge a protest. In addition, any interested party (as cited in FAR part 33) may file a protest alleging violations of a procurement statute or regulation.

The time available to lodge a protest is proposed in the rule as "a protest must be received by the contracting officer not later than 10 days after the basis of protest is know or should have been known, whichever is earlier." The Bureau believes the proposed time period to be reasonable for an interested party to lodge a written protest to the Contracting Officer, thereby conforming to the general principles reflected in FAR subpart 33.1. Since this protest would constitute a possible first-step procedure under FAR 33.1, the Bureau is required to: (1) Promptly notify all offerors (successful as well as unsuccessful) within the prescribed time-frame (for sealed bids and competitive negotiations) so that possible protests may be timely lodged with the Bureau; and (2) seek resolution

within the prescribed time-frame of the protest that is lodged before the interested party pursues the protest with the General Accounting Office (GAO) or General Services Board of Contract Appeals (GSBCA). In keeping with the procedures outlined in FAR 33.1 for filing protests, the rule language is considered appropriate.

Some comments expressed concern with the language in proposed section BIA 1480.402, providing for the Assistant Secretary and the Deputy Commissioner of Indian Affairs and the Contracting Officer, to authorize deviations from the use of the Buy Indian Act. The authority is reserved to the Assistant Secretary and to the Deputy Commissioner of Indian Affairs to exercise an exception to use of the Act when they consider doing so to be in the best interests of the Government. This management option must remain vested with the head of the agency. Also, for the reasons stated in proposed section BIA 1480.402 (b) and (c), the Contracting Officer must retain the authority to consider and authorize an exception to the use of the set-aside program under the Act when the pre-award process does not yield a responsible, responsive Indian offeror to provided supplies or services at a reasonable price. In addition, the Contracting Officer must also have the authority to consider a tribal resolution that requests a waiver of the Act. However, all deviations require the Contracting Officer to prepare a written Determination and Findings before the exception is exercised; and, except as stated in BIA 1480.402(b), it must be submitted to the Deputy Commissioner of Indian Affairs for review and approval/disapproval. It is believed that such higher-level review before the fact of the proposed exception will maintain an effective internal control system of oversight.

A number of comments objected formalizing by regulation the existing Bureau policy of having a minimum 51 percent Indian ownership of the Indian economic enterprise for participation in the set-aside awards under the Buy Indian Act. Prior to January, 1988, Bureau policy required participant firms to be 100 percent Indian-owned and controlled. The Bureau changed its policy in order to facilitate and expand economic development on Indian reservations by increasing the opportunities for Indian businesses to obtain operating capital, which was often difficult, if not impossible to do under the "100 percent ownership" policy. The Bureau believes this "minimum 51 percent ownership" requirement is a much more realistic requirement that can, with sufficient regulatory safeguards, protect the integrity of the majority Indian owner of the joint economic enterprise.

Corresponding with the change in Bureau policy from "100 percent ownership" to "a minimum of 51 percent ownership" of an Indian firm, the Bureau will no longer certify "Indian" ownership of a participating firm. Rather, a self-declaration approach will be used whereby an economic enterprise declares in writing in response to a specific Bureau set-aside solicitation that it meets the requirements of being "eligible," an "Indian," and an "Indian economic enterprise" for purposes of participation. The Contracting Officer or an interested party, as defined in proposed section BIA 1480.201 in the rule, may raise a protest to the representation declaration of an offeror. The protest will be handled by the Contracting Officer under proposed subpart BIA 1480.9 of the rule. The Bureau believes this approach will be more effective than a Bureau certification system to ensure the eligibility requirements of the Buy Indian Act.

Some comments expressed concern with the rules use of the term "daily business management"; and, omission of the phrase "owned-and-controlled" with respect to Indian person(s) and Indian economic enterprises. It is the position of the Bureau that ownership implies setting the policies and directions for an enterprise; and, that "ownership" thereby is synonymous with *control* of the enterprise. The Bureau believes that the *business management* term further defines the "ownership" principle, wherein the former implies the policy-making, budgeting, controlling, directing, coordinating, organizing, and planning functions for an enterprise. The words *ownership* and *managed* are viewed in the broad sense relative to *controlling* an enterprise, and are considered sufficient in this rule.

In addition to comments on the previously proposed regulation, the Secretary also wishes to address the concerns about violations of Indian preference contracting as cited in the Final Report of the Special Committee on Investigations, Senate Select Committee on Indian Affairs, November, 1989. In this report, the committee specifically identified two problems: (1) That self-declaration of Indian ownership, notwithstanding the penalties associated with making false statements in response to a contract solicitation, may not act as deterrent, and (2) that the 51% Indian minimum "ownership" requirement does not ensure the equitable return of profits to those Indian co-owners. In any cases, they are only acting as legal but not true partners in the business ventures.

Since early 1988, the Bureau has followed the 51% Indian ownership requirement and the self-certification policies in implementing the Indian preference contracting program. At this time, the Secretary is proposing this rule to provide a regulatory basis for these policies. However, recognizing that there are significant concerns about fraudulent representation and abuse of Indian preference contracting program, the Secretary is specifically inviting public comment on the issues of self-certification and minimum 51% ownership. The Secretary is also inviting discussion on alternative approaches to implementing this program and how to improve the integrity of Indian preference contracting programs overall.

In addition to the above comments, several editorial changes were made to the text to clarify the Bureau's intent regarding a specific provision. These editorial changes are considered minor and do not affect the substance or intent of the rule.

List of Subjects in 48 CFR Parts BIA 1401 to BIA 1499

Indian economic enterprises, Government procurement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 1401 to 1499 of title 48, chapter 14 of the Code of Federal Regulations are amended as set forth below.

1. Chapter 14 is amended by adding a new appendix A as follows:

APPENDIX A—BUREAU OF INDIAN AFFAIRS

SUBCHAPTER A—GENERAL

BIA Part

1401 Bureau of Indian Affairs Acquisition Regulation System.

1402 Definition of words and terms.

SUBCHAPTER B-G—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

1452 Solicitation Provisions and Contract Clauses.

SUBCHAPTER I—BUREAU OF INDIAN AFFAIRS SUPPLEMENTATION

1480 Acquisitions under the Buy Indian Act.

SUBCHAPTER A—GENERAL

PART BIA 1401—BUREAU OF INDIAN AFFAIRS ACQUISITION REGULATION SYSTEM

Subpart BIA 1401.1—Purpose, Authority, Applicability, Issuance

Sec.

Subpart BIA 1401.2—Administration

Subpart 1401.4—Deviations

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253(c)(5), and 5 U.S.C. 301.

Subpart BIA 1401.1—Purpose, Authority, Applicability, Issuance

BIA 1401.101 Purpose.

(a) The Bureau of Indian Affairs Acquisition Regulation (BIAAR) is issued to established uniform acquisition policies and procedures throughout the BIA which are necessary to implement or supplement the Federal Acquisition Regulation (FAR) and the Department of the Interior Acquisition Regulation (DIAR).

(b) BIAAR issuances do not reiterate material published in the FAR or the DIAR.

(c) Implementing material in the BIAAR expands upon or indicates the manner in which the Bureau of Indian Affairs will comply with related material in the FAR and the DIAR. Supplementing material addresses subjects which have no counterpart in the FAR or the DIAR. The absence of sections or subsections in BIAAR means no further explanation or qualification is considered necessary for implementation within the Bureau of Indian Affairs. Therefore, in order to assure that consideration is given to all acquisition policies and procedures, it is necessary to consult applicable sections of the FAR and DIAR as well as the BIAAR.

BIA 1401.102 Authority.

The DIAR authorizes supplementation or implementation of the FAR and DIAR in accordance with established procedures (see DIAR 1401.302) to enable the publication of essential acquisition instructions, policies and procedures that do not conflict with, supersede or duplicate those prescribed by the FAR and the DAIR. Regulations issued under this part shall be codified in 48 CFR chapter 14, appendix A, part BIA 1480 in accordance with DIAR 1401.303 and shall conform to the requirements of FAR subpart 1.3 and DIAR subpart 1401.3. The rulemaking notice for this BIAAR shall be submitted in writing to the Director, Office of Acquisition and Property Management for review and approval by the Assistant Secretary—Policy, Management and Budget in accordance with 401 DM 1.4C(3), before signature by the Assistant Secretary—Indian Affairs.

BIA 1401.103 Applicability.

The FAR, DIAR and BIAAR issuances apply to all acquisitions made by Bureau of Indian Affairs procurement activities as defined in FAR 1.103 except those entered into pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended by Public Law 100–472, unless the FAR, DIAR or BIAAR are specifically incorporated into the regulations implementing the Indian Self-Determination and Education Assistance Act.

BIA 1401.104 Issuance.

BIA 1401.104–1 Publication and code arrangement.

(a) The BIAAR is published in the form indicated in FAR 1.104–1.

(b) BIAAR issuances will be published on salmon pages in looseleaf form for insertion into the DIAR.

BIA 1401.104–2 Arrangement of regulations.

(a) *General.* The BIAAR conforms to the FAR and DIAR with respect to divisional arrangements, i.e., subchapters, parts, subparts, sections, subsections and paragraphs.

(b) *References and citations.* (1) This regulation shall be referred to as the Bureau of Indian Affairs Acquisition Regulation (BIAAR), appendix A to the Department of the Interior Acquisition Regulation. Any reference shall be cited as BIA followed by the appropriate number.

(2) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR." References to the DIAR shall be preceded by "DIAR."

BIA 1401.104–3 Copies.

Copies of the BIAAR in Federal Register form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

BIA 1401.105 OMB approval under the Paperwork Reduction Act.

The BIAAR information collection requirement contained in sections 48 CFR 1452.280–2, BIA 1452.280–4 and BIA 1480–201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Subpart BIA 1401.2—Administration

BIA 1401.201 Maintenance of the BIAAR.

The BIAAR is maintained by the Division of Contracting and Grants Administration, Office of Administration, Bureau of Indian Affairs. The Division is responsible for developing and preparing material to be included in the BIAAR.

Subpart BIA 1401.4—Deviations

BIA 1401.470 Procedure.

(a) Requests for deviation(s) from the FAR or DIAR shall be submitted in writing to the Director, Office Acquisition and Property Management, and approval and/or further processing as may be required in accordance with DIAR subpart 1401.4. Requests for deviation(s) from any BIAAR issuance shall be submitted in writing to the Bureau Central Office for approval and/or further processing as may be required. Requests for deviation(s) will only be considered if they have been submitted by a cognizant contracting officer. All requests for deviation(s) must be submitted prior to issuance of the solicitation for which the deviation(s) is sought and the deviation(s) must be approved prior to the issuance of the solicitation. If an exigency situation exists, verbal contact should be made with the Chief, Division of Contracting and Grants Administration. However, that official is only authorized to grant deviation(s) from the BIAAR.

(b) Requests for a deviation(s) shall provide sufficient information to permit Bureau of Indian Affairs compliance with FAR and DIAR requirements.

PART BIA 1402—DEFINITION OF WORDS AND TERMS

Subpart BIA 1402.1—Definitions

Sec.

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253 (c)(5), and 5 U.S.C. 301.

Subpart BIA 1402.1—Definitions

BIA 1402.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the

context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

Assistant Secretary means the Assistant Secretary-Indian Affairs, Department of the Interior, or designee.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Bureau Central Office means the Headquarters component located in Washington, DC, that serves as staff resource to the Assistant Secretary—Indian Affairs.

Head of the Contracting Activity means the Deputy Commissioner of Indian Affairs.

Chief of the Contracting Office means the senior contract specialist at a Bureau Area or Central Office.

Contracting Officer means an official designated in accordance with FAR 1.6 and DIAR 1401.6 of this title, having the authority to enter into, administer and/or terminate contracts, and make related determinations and findings or justifications and approvals.

Day means work day.

Secretary means the Secretary of the Interior.

SUBCHAPTERS B–G (RESERVED)

SUBCHAPTER H–CLAUSES AND FORMS

PART BIA 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart BIA 1452.1—Instructions for Using Provisions and Clauses

Sec.

BIA 1452.101 Scope of subpart

Subpart BIA 1452.2—Texts of Provisions and Clauses

Sec.

BIA 1452.280 Scope of subpart

BIA 1452.280–1 Notice of Indian small business economic enterprise—small purchase set-aside.

BIA 1452.280–2 Notice of Indian economic enterprise set-aside.

BIA 1452.280–3 Subcontracting limitations.

BIA 1452.280–4 Representation Declaration for eligible Indian economic enterprises.

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253 (c)(5), and 5 U.S.C. 301.

Subpart BIA 1452.1—Instructions for Using Provisions and Clauses

BIA 1452.101 Scope of subpart.

This subpart gives instructions for using subpart BIA Part 1452. All provisions and clauses in solicitations and contracts shall be incorporated in full text.

Subpart BIA 1452.2—Texts of Provisions and Clauses

BIA 1452.280 Scope of subpart.

This subpart sets forth the texts of all BIAAR provisions and clauses (see 1452.101) and for each provision and clause, gives (a) a cross-reference to the location in the BIAAR that prescribes its use, and (b) directions for including it in solicitations and/or contracts.

BIA 1452.280–1 Notice of Indian small business economic enterprise—small purchase set-aside.

As prescribed in BIA 1480.503(b)(1), and in lieu of the requirements of FAR 19.508(a), insert the following provision in each written solicitation of quotations or offers to provide supplies or services when the acquisition is subject to small purchase procedures in FAR part 13.

Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside (Current Date)

Pursuant to the Buy Indian Act, 25 U.S.C. 47, quotations under this solicitation are solicited only from eligible Indian economic enterprises (Subpart BIA 1480.8) which also must be small business concerns. The offeror must submit a completed Representation Declaration (BIA 1452.280–4) at the time of submission of its offer to a specific solicitation as evidence that its economic enterprise is eligible to be considered for award. Any acquisition resulting from this solicitation will be from such a concern. Quotations received from enterprises that are not eligible Indian economic enterprises shall not be considered and shall be rejected.

(End of provision)

BIA 1452.280–2 Notice of Indian economic enterprise set-aside.

As prescribed in BIA 1480.504-1(b)(2), insert the following clause in solicitations and contracts involving Indian economic enterprise set-asides:

Notice of Indian Economic Enterprise Set-Aside (Current Date)

(a) Definitions. *Eligible,* as used in this clause, means that the majority owner of an Indian economic enterprise meets both the definitions of "Indian" and of "Indian economic enterprise," as set forth below.

Indian, as used in this clause, means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise, as used in this clause, means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: when an offer is made in response to a written solicitation; at the time of contract award; and during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part; and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian tribe, as used in this clause, means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native Village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Self-certified, as used in this clause, means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in BIA Subpart 1480.8.

(b) *General.* (1) Pursuant to the Buy Indian Act, offers are solicited only from eligible Indian economic enterprises. Therefore, the offeror must represent by written declaration at the time of submission of its offer to a specific solicitation that its economic enterprise is eligible to be considered for award. (If selected for award, the offeror shall: (i) Comply with the minimum 51 percent ownership and daily business management requirement criterion; (ii) comply with the preference requirements contained in subparagraphs (c)(3) and (c)(4) below during performance of the contract if award is made to the economic enterprise; and (iii) provide the required percentage of the work/costs with its own resources, exclusive of manufactured or leased items and/or supplies or materials produced off-site, as required in BIA 1480.602.

(2) Offers received from non-Indian economic enterprises or non-eligible Indian economic enterprises shall be rejected.

(3) Any award resulting from this solicitation will be made to an eligible Indian economic enterprise, defined in paragraph (a) above.

(c) *Required Submissions.* In response to this solicitation, the eligible Indian economic enterprise shall also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the contractor over the contract term as required by the BIA 1452.208–3, Subcontracting Limitation clause;

(2) A description of the source of human resources for the work to be performed by the contractor;

(3) A description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by DIAR 1452.204–71, Indian Preference—Department of the Interior and/or, DIAR 1452.204–72, Indian Preference Program—Department of the Interior clause(s);

(4) A description of how subcontractors (if any) will be selected in compliance with the "Indian Preference—Department of the Interior" and/or "Indian Preference Program—Department of the Interior" clause(s).

(5) The names, addresses, and descriptions of work to be performed by Indian persons or economic enterprises being considered for subcontracts (if any) and the percentage of the total direct project work/costs they would be performing;

(6) Qualifications of the key personnel (if any) that will be assigned to the contract;

(7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation; and

(8) A completed Representation Declaration (BIA 1452.280–4).

(d) *Required Assurance.* Prior to Bureau award of an Act contract, as well as upon successful and timely completion of the contract, but prior to acceptance of the work or product by the Bureau contracting officer, the contractor shall provide written assurance to the Bureau that it will, or has, complied fully with the requirements of this clause.

(e) *Non-responsive.* Failure to provide the information required by paragraphs (c) and (d) of this clause may cause the offer to be determined non-responsive and rejected.

(End of clause)

BIA 1452.280–3 Subcontracting limitations.

As prescribed in BIA 1480.602(b), insert the following clause in each written solicitation of offers and contracts to provide supplies, services, or construction authorized by BIA 1480.401(b).

Subcontracting Limitations (Current Date)

(a) *Definitions.* (1) *Subcontract,* as used in this clause, means any contract (as defined by FAR Subpart 2.1) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders and modifications to purchase orders.

(2) *Subcontractor,* as used in this clause, means an individual, partnership, firm, corporation or any acceptable combination thereof, or joint venture, to which a contractor subcontracts part of the work under the contract. The term shall include subcontractors in any tier who perform work on the project site.

(b) *Required Percentages of Work by the Contractor.* In performance of the contract for:

(1) Services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the contractor;

(2) Supplies (other than procurement from a regular dealer in such supplies), the contractor shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction, the contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors, the contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees pursuant to FAR 52.219–14(d) Construction by special trade contractors.

(c) *Indian Preference.* Regardless of the contract type for services, supplies, or construction authorized by BIA 1480.401(b), the contractor agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of subcontracts under this contract in accordance with DIAR 1452.204–71, Indian Preference—Department of the Interior clause.

(d) *Cooperation.* The contractor agrees to carry out the requirements of this clause to the fullest extent and to cooperate in any study or survey conducted by the contracting officer or agents of the Bureau of Indian Affairs as may be necessary to determine the extent of the contractor's compliance with this clause.

(e) *Incorporation in Subcontracts.* The contractor agrees to incorporate the substance of this clause, including this paragraph (e), in all subcontracts for supplies, services, and construction authorized by BIA 1480.401(b) awarded under this contract.

(End of clause)

BIA 1452.280–4 Representation Declaration for eligible Indian economic enterprises.

As prescribed in BIA 1480.801(a), insert the following provision in each written solicitation of quotations or offers for supplies services, or construction authorized by BIA 1480.401(b):

Representation Declaration Buy Indian Act (25 U.S.C. 47) and 48 CFR Chapter 14 (Current Date)

I. A. *Instructions.* Offerors requesting participation under the Buy Indian Act (25 U.S.C. 47) shall prepare their Representation Declaration as prescribed therein. The declaration shall be submitted to the applicable Contracting Officer by the offeror in responding to a specific Bureau solicitation under the Act and part BIA 1480.

B. *Procedure.* 1. The Buy Indian Act and its implementing regulations authorize the Secretary of the Interior and the Bureau of Indian Affairs to contract with eligible Indian economic enterprises for the procurement of supplies and services. Before submitting this declaration, offerors are encouraged to read the regulations at Part BIA 1480. A copy is available upon request from Bureau of Indian Affairs' Contract Offices.

2. The information requested below is to be submitted only in an offer in response to a specific solicitation under the Act. The completed and signed Representation Declaration is to be returned with an offer to the Bureau Contract Office issuing the solicitation.

3. To be eligible for awards by the Bureau of Indian Affairs under the Buy Indian Act and Part BIA 1480, economic enterprises must meet the eligibility and self-certification requirements as defined in the Act's regulations. Offerors applying for awards under the Act authority must do so only in an offer responding to a specific Bureau solicitation under the Act. Failure to provide the self-certification requirement shall cause the offer to be rejected.

C. *Definitions.—Eligible,* as used in this provision, means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this Declaration.

Indian, as used in this provision, means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise, as used in this provision, means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: When an offer is made in response to a solicitation; at the time of contract award; and, during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate, written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part; and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian tribe, as used in this provision, means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

II. Representation Declaration. This Declaration is to be completed and submitted only in an offer in response to a specific Bureau of Indian Affairs solicitation issued under the Buy Indian Act. Mail or deliver offers by the required deadline to the Bureau of Indian Affairs Contract Office which issued the solicitation. Contact that Bureau Contract Office with any questions.

A. The offeror represents and certifies as part of its offer that it [ ] is, [ ] is not (check one) an eligible Indian economic enterprise.

B. I understand that any intentional false statement in this Representation Declaration, or willful misrepresentation relative thereto, is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).

C. Also, I understand that the provisions of the Civil False Claims Act (31 U.S.C. 3729–3731) establish civil liability for false claims

and provides for a civil penalty of $2,000 per false claim and double the damages suffered by the Government.

D. I have read and understand the above statement. I certify that the information provided in this Declaration is true, accurate and complete to the best of my knowledge and belief. I am aware of the regulations for this Act as they appear in 48 CFR chapter 14, appendix a, part BIA 1480.

E. *Economic Enterprise*

Firm Name: _____

_____

Signature

By: _____

(Typed name of majority owner/Chairman of the board)

Address of Firm, include zip code:

_____

_____

_____

Telephone number of firm, include Area code:

By: _____

(Signature of majority owner/Chairman of the board)

Date: _____

SUBCHAPTER I—BUREAU OF INDIAN AFFAIRS SUPPLEMENTATION

PART BIA 1480—ACQUISITIONS UNDER THE BUY INDIAN ACT

Subpart BIA 1480.1—General

Sec.

Subpart BIA 1480.2—Definitions

Subpart BIA 1480.3—Applicability

Subpart BIA 1480.4—Policy

Subpart BIA 1480.5—Procedures

Subpart BIA 1480.6—Contract Requirements

Subpart BIA 1480.7—Contract Administration

Subpart BIA 1480.8—Representative by an Indian Economic Enterprise Offeror.

Subpart BIA 1480.9—Protests of Representation Declaration

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 253(c)(5), and 5 U.S.C. 301.

Subpart BIA 1480.1—General

BIA 1480.101 Scope of part.

This part prescribes policies and procedures for the commercial acquisition of supplies and services from self-certified eligible Indian economic enterprises pursuant to the Buy Indian Act, 25 U.S.C. 47, and this part. Acquisitions conducted under this part shall be subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Bureau of Indian Affairs. The provisions of the FAR shall govern in all instances where there may be a conflict or discrepancy.

BIA 1480.102 Buy Indian Act acquisition regulations.

(a) Acquisition regulations under this part are under the Department of the Interior Acquisition Regulations (DIAR) System and are issued in order to supplement Federal Acquisition Regulation (FAR) and DIAR requirements to satisfy the specific and unique needs for the Bureau of Indian Affairs in the implementation of the Buy Indian Act.

(b) Regulations issued under this part shall be codified in 48 CFR chapter 14, appendix A, part BIA 1480 in accordance with DIAR 1401.303 and shall conform to the requirements of FAR subpart 1.3 and DIAR subpart 1401.3.

(c) Regulations under this part are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301. This authority has been redelegated to the Assistant Secretary—Indian Affairs under part 209, chapter 8, of the Departmental Manual (209 DM 8).

(d) Regulations issued under this part are under the direct oversight and control of the Director, Office of Administration, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20240, which is responsible for their review, issuance, implementation, and oversight.

BIA 1480.103 Information Collection.

(a) The collection of information contained in Section BIA 1480.601 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0019. In addition, the contract office requires use of the requirements in SF–129, Solicitation Mailing List Application; and may require use of the SF–254, the Architect-Engineer and Related Services Questionnaire, and SF–255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items for collections of information have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned the clearance numbers 9000–0002, 9000–0004, and 9000–0005 respectively.

The BIAAR information collection requirements contained in sections 48 CFR 1452.280–2, 1452.280–4, and BIA 1480–201 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Subpart BIA 1480.2—Definitions

BIA 1480.201 Definitions.

The following words and terms are used throughout this part as defined below, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed in a particular subpart or portion of a subpart.

Bureau Central Office means the Office of Administration, Division of Contracting and Grants Administration, Bureau of Indian Affairs, Washington, DC.

Buy Indian Act means section 23 of the Act of June 25, 1910 (25 U.S.C. 47), which also is referred to in this part as "the Act."

Buy Indian Contract means any Bureau acquisition action (by contract, purchase order, delivery order, or modification) for the products of Indian industry and labor from a self-certified eligible Indian economic enterprise pursuant to the authority of the Act and this part, except for the construction limitations stated in BIA 1480.401(b).

Dealer (regular) or *Manufacturer* means an Indian person who owns, operates or maintains a store, warehouse, factory or other establishment which meets the conditions in FAR 22.601.

Eligible means that the majority owner of an Indian economic enterprise

(as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this part.

Fair market means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined pursuant to FAR 19.202–6(a).

Indian means a person who is a member of an Indian Tribe, as defined herein.

Indian Economic Enterprise means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); (2) for non-tribal ownership, has one or more of its Indian owners involved in daily-business management of the economic enterprise; and (3) has the majority of its earnings accrue to such Indian person(s) if organized for profit. For not-for-profit enterprises, the majority of the board of directors (or other controlling body) must be Indian persons. These requirements must exist: when an offer is made in response to a written solicitation; at the time of contract award; and, during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate, written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this Part; and, the Bureau may consider termination for default if it is determined to be in the best interest of the government.

Indian land means land over which an Indian tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971, so long as the corporation qualifies as an Indian economic enterprise, as defined herein. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the tribe as defined by the Secretary.

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony, Alaska Native village, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Interested party means an Indian economic enterprise which is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual Bureau award of a particular contract set-aside under the Act.

Products of Indian industry and labor means any products (including, but not limited to printing, notwithstanding any other law), goods, supplies or services that can be provided by an eligible Indian economic enterprise that either produces them with its own labor force, skills, or efforts, or is a regular dealer in such goods or services.

Protest of representation means an accurate, complete and timely written objection by an interested party to a proposed or actual Bureau award to an eligible Indian economic enterprise of a contract set-aside under the Act.

Self-Certified means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the provisions in BIA subpart 1480.8.

Small Purchase means an acquisition of supplies or services pursuant to procedures in FAR part 13.

Tribal Governing Body means the federally recognized entity empowered to exercise the governmental authority of a Tribe, as the latter is defined herein.

Work means the level of work effort by the prime contractor based on total direct project costs.

Subpart BIA 1480.3—Applicability

BIA 1480.301 Scope of part.

Except as provided in BIA 1480.401(b), this part is applicable to acquisitions (including small purchases) made by the Bureau of Indian Affairs pursuant to 25 U.S.C. 47 and those made by any other Bureau or Office of the Department of the Interior which is delegated the authority to make such acquisitions pursuant to 25 U.S.C. 47 and BIA 1480.401(d).

BIA 1480.302 Restrictions on use of the Buy Indian Act.

(a) The authority of the Act and the procedures contained in this part shall not be used to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized Bureau programs (or parts thereof) that are within the legislative and regulatory scope and intent of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended. The Buy Indian Act is used by the Bureau solely to award commercial contracts to eligible Indian economic enterprises in meeting Bureau program needs and acquisition requirements for its own operations.

(b) The authority of this Act shall not be used to acquire construction services, as defined in FAR 36.102, except as set forth in BIA 1480.401(b).

Subpart BIA 1480.4—Policy

BIA 1480.401 General.

(a) Except as provided in paragraph (b) of this section, it is the policy of the Department of the Interior to use the Act as authority to give preference to eligible Indian economic enterprises through the use of set-asides when acquiring supplies and services of Indian industry and labor in meeting Bureau needs and requirements.

(b) Construction, as defined in FAR 36.102, shall be acquired pursuant to FAR subparts 6.1 and 6.2 or Public Law 93–638, as amended, as applicable, except that construction of Indian reservation roads (other than those in the State of Oklahoma) may be acquired under the authority of the Act and this part pursuant to 23 U.S.C. 101 and 204(e), as amended, and 41 U.S.C. 252(c)(2), as amended. Indian reservation road construction located in the State of Oklahoma acquired pursuant to the Act is prohibited by court injunction and shall be acquired only by using full and open competition or small business set-asides if required by DIAR 1419.503–70. (*Andrus v. Glover*, 446 U.S. 608 (1980)).

(c) The authority of the Secretary under the Act has been delegated to the Assistant Secretary—Indian Affairs and is exercised by the Bureau in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(d) The authority of the Secretary under the Act may be delegated to a bureau or office within the Department of the Interior other than the Bureau of Indian Affairs only by Secretarial Order pursuant to part 012, chapter 1 of the Departmental Manual (012 DM 1).

(e) The Deputy Commissioner of Indian Affairs, as the head of the contracting activity, shall ensure that all acquisitions made by the Bureau pursuant to the Act are in compliance with the requirements of this part.

BIA 1480.402 Deviations.

(a) Except as provided in paragraphs (b) and (c) of this section, the Deputy Commissioner of Indian Affairs by delegation from the Assistant Secretary—Indian Affairs may approve deviations from the requirements of this part or exceptions to the requirement for use of the Act in Bureau acquisitions when such action is determined to be in

the best interests of the Government. Requests for deviations or exceptions shall be submitted in writing from the contracting officer before the fact by the appropriate Area Office Director to the Bureau Central Office for review. After this review, the request shall be submitted to the Deputy Commissioner of Indian Affairs for approval/disapproval.

(b) The contracting officer may also authorize an exception to use of the Act for an acquisition of the Bureau, when it is determined that:

(1) In accordance with BIA 1480.503(b)(2), there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises;

(2) In accordance with BIA 1480.503(b)(3), only one quotation is received from a responsible, eligible small business economic enterprise and the price is unreasonable;

(3) In accordance with BIA 1480.501–1(c), there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises at reasonable prices; or

(4) In accordance with a tribal resolution from the governing body or bodies of the applicable Indian tribe(s) for work on or near its own Indian land, the tribe requests a waiver of the Act authority with sufficient justification.

(c) Other exceptions to use of the Act may be made by the officials specified in, and under the conditions prescribed by, BIA 1480.501–1(f) or BIA 1480.504–2(c).

Subpart BIA 1480.5—Procedures

BIA 1480.501 General.

All acquisitions made under this part, including small purchases, shall conform to all applicable requirements of the FAR and DIAR.

BIA 1480.502 Order of precedence for use of Government supply sources.

Except as required by FAR 8.002, acquisitions made under this part shall be from the sources of supplies and services listed in order of precedence in Attachment 1 of this part, providing the eligible Indian economic enterprise can meet the Bureau specifications and delivery requirements, and the anticipated cost is determined to be reasonable and at a fair market price.

BIA 1480.503 Small purchases.

(a) Subject to the limitations on construction in BIA 1480.401(b), each acquisition of supplies and services that is subject to small purchases procedures under FAR part 13 and DIAR part 1413, shall be set-aside exclusively for eligible Indian economic enterprises which are also small business concerns under the criteria and size standards of 13 CFR 121. This preference action shall be accomplished by use of Indian small business economic enterprise small purchase set-asides.

(1) Each written quotation or solicitation under an Indian small business economic enterprise—small purchase set-aside shall contain the provision at BIA 1452.280–1, Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside. If the solicitation is oral, information substantially identical to that which is in the provision shall be given to potential offerors.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises which are small business concerns (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.106(a) for obtaining competition) that will be competitive in terms of market price, quality, and delivery, the contracting officer shall proceed with an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(3) If the contracting officer proceeds with an Indian small business economic enterprise—small purchase set-aside and receives a quotation at a reasonable price from only one such responsible economic enterprise (see FAR 13.106(c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonably priced quotation from such an economic enterprise, the contracting officer shall cancel the set-aside and complete the purchase by using an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(4) When proceeding under the circumstances in BIA 1480.503 (b)(2) or (b)(3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other means.

(5) If the purchase is to proceed in accordance with BIA 1480.503 (b)(2) or (b)(3), the contracting officer shall document the reason(s) for such purchase in the file.

(b) The provision at BIA 1452.208–4, Representation Declaration, the clause at DIAR 1452.204–71, Indian Preference—Department of the Interior, and the clause at BIA 1452.280–3, Subcontracting Limitation, shall be included in each solicitation of quotations and resulting purchase order(s).

(c) Small purchases under this section shall conform to the competition and price reasonableness documentation requirements of FAR 13.106 and DIAR 1413.106.

BIA 1480.504 Other than full and open competition.

BIA 1480.504–1 Set-asides for eligible Indian economic enterprises.

(a) Each proposed commercial acquisition for supplies or services that has an anticipated dollar value in excess of the small purchase-threshold amount in FAR part 13 shall be set-aside exclusively for eligible Indian economic enterprises [and referred to as an "Indian Economic Enterprise Set-Aside"] when there is a reasonable expectation that offers will be received from two or more responsible enterprises and award will be made at a reasonable price except when:

(1) The acquisition is for construction, other than construction permitted by BIA 1480.401(b);

(2) An exception from use of the Act has been obtained in accordance with BIA 1480.402; or

(3) Use of other than full and open competition has been justified and approved in accordance with BIA 1480.504–2.

(b) When using an Indian economic enterprise set-aside under this section, the contracting officer shall:

(1) Synopsize the acquisition in the Commerce Business Daily (CBD) as required by FAR subpart 5.2 and identify it as an Indian Economic Enterprise Set-Aside;

(2) Insert the clause at BIA 1452.280–2, Notice of Indian Economic Enterprise Set-Aside, in each solicitation of offers and resulting contracts;

(3) Insert the clause at BIA 1452.280–3, Subcontracting Limitation, and the clause at DIAR 1452.204–71, Indian Perference—Department of the Interior, in each written solicitation of quotations or offers and resulting contracts;

(4) Insert the clause at DIAR 1452.204–72, Indian Preference Program, Department of the Interior, in each solicitation and resulting contract where it is determined by the contracting officer, prior to solicitation, that the work will be performed in whole or in part on or near Indian land. Tribal employment preference requirements may be added to the requirements of the clause in accordance with DIAR 1404.7005;

(5) Insert the provision at BIA 1452.280–4, Representation Declaration, in each written solicitation of quotations or offers to obtain a declaration of

eligibility to participate under the Act and this part from each offeror;

(6) Use the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry (contained in Attachment 2 to this part) to meet the requirements of FAR 6.302–5(c)(2);

(7) By separate memorandum to the file, certify that: (i) The supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises; (ii) the anticipated cost to the Bureau of the required supplies or services is determined to be reasonable; and (iii) the information in the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry in Attachment 2 to this part is accurate and complete as it pertains to the proposed acquisition;

(8) Solicit bids using sealed bidding procedures in accordance with FAR part 14 whenever the conditions in FAR 6.401(a) are met. If the conditions in FAR 6.401(a) are not met, competitive proposals shall be solicited in accordance with FAR part 15;

(9) Reject offers which fail to include the provision at BIA 1452.280–4. The contracting officer may also request (as part of a normal pre-award audit) the Office of the Inspector General (OIG) to: (i) Assist in determining the bona fide status of the low responsive and responsible offeror on Act contracts; and (ii) determine whether the work will be performed by the labor force required under BIA 1480.602. Such requests to the OIG should be made on the standard audit request form, DI–1902, as required by DIAR 1415.805–5;

(10) When using sealed bidding, determine that the price offered by the prospective contractor is reasonable and at a fair market price as required by FAR 14.407–2 before awarding a contract;

(11) When using competitive proposals, solicit proposals in accordance with FAR subpart 15.4 and select sources in accordance with FAR subpart 15.6 and DIAR subpart 1415.6;

(12) When using competitive proposals or when negotiating modifications which impact the cost of a contract: (i) conduct proposal analysis including cost or price analysis in accordance with FAR subpart 15.8; (ii) negotiate profit or fee in accordance with the procedures in FAR subpart 15.9 and DIAR subpart 1415.8; and (iii) prepare a negotiation memorandum in accordance with FAR 15.808 and DIAR 1415.808;

(13) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR part 36 and DIAR subpart 1436.6; and

(14) When acquiring services to be performed in whole or in part on Indian land, give written notice to the governing body or bodies of the applicable Indian tribe or tribes. The notice shall be provided simultaneously with publication of the synopsis required by subparagraph (b)(1) of this section with information to the Tribe(s) of the Bureau's intent to contract if there are Indian economic enterprises which are eligible, interested, responsive and responsible, and the award can be made at a reasonable price. If the tribe does not oppose the set-aside intention or advise the Bureau of its intent to contract for the program within 15 calendar days from the date of publication in the Commerce Business Daily of the solicitation notice, the Bureau will proceed with the solicitation in accordance with FAR 5.203.

(c) When the contracting officer determines that there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises and award cannot be made at a reasonable and fair market price, the basis for such a determination shall be documented in writing by the contracting officer and placed in the contract file. The contracting officer shall proceed with the acquisition using the sources identified in Attachment 1 to this part as listed in order of precedence.

(d) If an interested Indian economic enterprise is identified after a market survey has been performed and a solicitation has been issued (which is not restricted to participation of Indian economic enterprises) but prior to the date established for receipt of offers, the contracting officer shall provide a copy of the solicitation to this enterprise. In such cases, preference under the Act will not be given to the Indian economic enterprise. Under these conditions, the contracting officer may extend the date for receipt of offers when such action is determined to be practicable.

(e) When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable and fair market price in response to an acquisition set-aside under paragraph (a) of this subsection, the contracting officer shall: (1) Make an award to that enterprise; (2) document the reason only one offer was received; (3) and initiate action to increase competition in future solicitations as required by FAR 14.407–1(b).

(f) In response to an acquisition set-aside under BIA 1480.504–1(a), when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices; or when only one bid is received from such an enterprise and the contracting officer determines the price to be unreasonable; or when no responsive bids have been received from such enterprises, the chief of the contracting office shall cancel the solicitation and reject all bids pursuant to a written determination in accordance with FAR 14.404–1(c). After notice of rejection to all bidders has been made pursuant to FAR 14.404–3, completion of the acquisition shall be made:

(1) Using negotiation (see FAR 14.404–1(e)(1) and 15.103), provided the contracting officer has determined by the written determination required by FAR 14.404–1(e) that completion through use of negotiation is authorized and approval has been obtained as required by DIAR 1414.404–1; or

(2) Using a new solicitation and the sources identified in Attachment 1 to this part, as listed in order of precedence if the use of negotiation is not authorized in the written determination required by FAR 14.404–1(c) and DIAR 1414.404–1.

(g) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected pursuant to a written determination by the chief of the contracting office under the conditions set forth in FAR 15.608(b) and DIAR 1415.608.

BIA 1480.504–2 Other circumstances for use of other than full and open competition.

(a) Other circumstances may exist with regard to fulfilling an acquisition requirement of the Bureau where the use of an Indian economic enterprise set-aside under BIA 1480.504–1(a) and FAR 6.302–5 is not feasible. In such situations, the requirements of FAR subparts 6.3 and 6.4 and DIAR subparts 1406.2 and 1406.3 shall be applicable in justifying the use of appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions under this subsection and FAR subpart 6.3 shall be synopsized first in the Commerce Business Daily (CBD) in accordance with the requirements of FAR 5.207 and DIAR 1405.207.

(c) Justifications for use other than full and open competition (other than the Class Justification in Attachment 2 to this part) under this section shall be

approved for a proposed contract, or for a modification increasing the scope of an existing contract, by:

(1) A supervisory contract specialist (Level IV Warrant holder) when the anticipated dollar value of the action is not over $25,000;

(2) The Chief, Division of Contracting and Grants Administration (Central Office) when the anticipated dollar value of the action is over $25,000 and less than $100,000;

(3) The Bureau Competition Advocate (Central Office) when the anticipated dollar value of the action is over $100,000 but does not exceed $1,000,000;

(4) The Deputy Commissioner of Indian Affairs when the anticipated dollar value of the action is over $1,000,000 but does not exceed $10,000,000; and

(5) The Director, Office of Acquisition and Property Management, Office of the Secretary, when the dollar value of the action is over—$10,000,000.

BIA 1480.505 Debarment and suspension.

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406–2(b)(1) and 9.407–2(a)(3). Recommendations for debarment or suspension shall be referred to the Director, Office of Acquisition and Property Management, Department of the Interior, pursuant to DIAR 1409.406–3 and 1409.407–3 through the Division of Contracting and Grants Administration (Central Office) and concurred in by the Deputy Commissioner of Indian Affairs.

Subpart BIA 1480.6—Contract Requirements

BIA 1480.601 Indian preference.

(a) Solicitations of quotations or offers and resulting contracts awarded pursuant to the Act shall include the clause at DIAR 1452.204–71, Indian Preference—Department of the Interior (see BIA 1480.503(c) and BIA 1480.504–1(b)(3)).

(b) Solicitations of offers and resulting contracts, exceeding $50,000 shall include the clause at DIAR 1452.204–72, Indian Preference Program—Department of the Interior (see BIA 1480.504–1(b)(4)) where it is determined by the contracting officer (in advance of the solicitation) that the work under the contract will be performed in whole or in part on or near Indian land.

BIA 1480.602 Subcontracting limitations.

(a) In contracts awarded pursuant to this part, the eligible Indian economic enterprise (the concern) must agree to the following limitations in performance of the contract for:

(1) Services (except construction)—at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern:

(2) Supplies (other than procurement from a regular dealer in such supplies)—the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction—the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors—the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees pursuant to FAR 52.219–14(d) Construction by special trade contractors.

(b) The contracting officer shall insert the clause at BIA 1452.280–3, Subcontracting Limitation, in all purchase orders and contracts for services, supplies, or construction authorized by BIA 1480.401(b) awarded to eligible Indian economic enterprises pursuant to this part.

BIA 1480.603 Performance and payment bonds.

Solicitations requiring performance and payment bonds shall contain the information required by FAR 28.102–3 and authorize use of any of the types of security acceptable under FAR subpart 28.2. Pursuant to 25 U.S.C. 47a, the contracting officer may accept alternative forms of security in lieu of performance and payment bonds required by FAR 28.102, if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

Subpart BIA 1480.7—Contract Administration

BIA 1480.701 Contract administration requirements.

The contracting officer and the contracting officer's representative (see DIAR 1401.670) shall monitor performance and progress to ensure contractor compliance with part 42 of the FAR. Attention shall be directed also to ensure contractor compliance with the following provisions of this part:

(a) Maintenance of the minimum 51% ownership and daily management criterion requirement of subparagraph (b)(1) of the clause at BIA 1452.280–2; and

(b) Maintenance of the limitations required by the clause at BIA 1452.280–3 when acquiring services, supplies, and construction authorized under BIA 1480.401(b); and

(c) Implementation and enforcement of Indian preference requirements contained in DIAR 1404.7003, as prescribed by BIA 1480.601.

Subpart BIA 1480.8—Representation by an Indian Economic Enterprise Offeror

BIA 1480.801 General.

(a) The contracting officer shall insert the provision at BIA 1452.280–4, Representation Declaration, in all solicitations regardless of dollar value, set-aside for Indian economic enterprises under this part.

(b) To be considered for an award under an acquisition set-aside under BIA 1480.503 or BIA 1480.504–1, an offeror must provide the Representation Declaration provision at BIA 1452.280–4. An offeror must represent that it meets both the definitions of *Indian* and *Indian economic enterprise* (as defined in BIA 1480.201) and only in response to a specific solicitation set-aside under the Act and this part. These requirements must exist: when an offer is made in response to a solicitation; at the time of contract award and during the full term of the contract. If a contractor no longer meets the eligibility requirements after award, the contractor shall provide immediate written notification to the contracting officer. Failure to provide immediate written notification to the contracting officer shall render the economic enterprise ineligible for future contract awards under this part, and the Bureau may consider termination for default if it is determined to be in the best interest of the government.

(c) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is an eligible Indian economic enterprise unless another interested party challenges the economic enterprise representation or the contracting officer has reason to question the representation. Challenges of and questions concerning a specific Representation Declaration shall be referred to the contracting officer or chief of the contracting office in accordance with BIA subpart 1480.9.

(d) The contracting officer shall maintain files compiled from submissions by eligible Indian economic enterprises of the Solicitation Mailing List Application (SF–129); the SF–254 and SF–255, as applicable; and, the

Representation Declaration provision in BIA 1480.280–4.

BIA 1480.802 Representation declaration provision.

(a) The Representation Declaration provision shall be available from all Bureau contracting offices.

(b) The submission of a Solicitation Mailing List Application (or SF–254 and SF–255 for Architect-Engineer services, when applicable) by an eligible Indian economic enterprise does not remove the requirement for it to submit the completed Representation Declaration provision also required by this part if it wishes to be considered as an offeror for a specific solicitation. Contracting officers may determine the validity of the contents of the applicant's declaration.

(c) Any false or misleading information submitted by an economic enterprise when submitting an offer in consideration for an award set-aside under the Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance under the Act authority are subject to the penalties of 31 U.S.C. 3729–3731 and 18 U.S.C. 287.

BIA 1480.803 Declaration process.

(a) It is the policy of the Bureau that only eligible Indian economic enterprises are to participate in acquisitions set-aside under the Act and this part. The Bureau procedure supports responsible Indian economic enterprises and seeks to prevent circumvention or abuse of the Act.

(b) Eligibility is based on information furnished by the economic enterprise to a Bureau contracting officer on the Representation Declaration provision at BIA 1452.280–4 in response to a specific solicitation under the Act. Offerors must submit their completed Declaration provisions to the bureau contracting office issuing the specific solicitation.

(c) The eligibility declaration remains in effect until:

(1) Voluntarily surrendered;

(2) Revoked for cause if the offeror or contractor information was falsified;

(3) The circumstances of the economic enterprise change so that it is no longer an eligible entity; or

(4) A contractor has been debarred or suspended or proposed for debarment, or otherwise declared ineligible.

(d) Declarations from economic enterprises may be reviewed by the appropriate Regional Solicitor when the contracting officer believes such review is necessary.

(e) Representation declaration of an Indian economic enterprise does not relieve the contracting officer of the obligation for determining contractor responsibility, as required by FAR subpart 9.1.

Subpart BIA 1480.9—Protests of Representation Declaration

BIA 1480.901 General.

(a) The contracting officer shall accept an offeror's written representation declaration of being an eligible Indian economic enterprise (as defined in BIA 1480.201) only when it is submitted with an offer in response to a specific solicitation under the Act. Another interested party may challenge the representation declaration status of an offeror or contractor by filing a written protest to the applicable contracting officer in accordance with the procedures in BIA 1480.902.

(b) After receipt of offers, the contracting officer may question the eligibility declaration of any offeror in a specific offer by filing a formal objection with the chief of the contracting office.

BIA 1480.902 Receipt of protest.

(a) Protests against the Representation Declaration of an offeror, from any interested party, whether timely, in accordance with paragraph (c) of this section, or not, shall be filed with the contracting officer of the location.

(b) The protest shall be in writing and shall contain the basis for the protest with accurate, complete, specific and detailed evidence to support the allegation that the offeror is neither eligible nor does not meet both the definitions of *Indian* and of *Indian economic enterprise* cited in BIA 1480.201. The contracting officer will dismiss any protest that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a protest must be received by the contracting officer not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(1) A protest may be made orally if it is confirmed in writing within the ten-day period after the basis of protest is known or should have been known, whichever is earlier.

(2) A protest may be made in writing if it is delivered by hand, telefax, telegram, or letter postmarked within the ten-day period after the basis of protest is known or should have been known, whichever is earlier.

(3) A contracting officer's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely protest, the contracting officer shall:

(1) Notify the protestor of the date it was received, and that the representation declaration of the economic enterprise being challenged is under consideration by the Bureau; and

(2) Furnish to the economic enterprise whose representation declaration is being challenged a request to provide detailed information on its eligibility by certified mail, return receipt requested.

(e) Within three days after receiving a copy of the protest and the Bureau's request for detailed information, the challenged offeror must file with the contracting officer a completed statement answering the allegations in the protest, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the three days, or another period of time granted by the contracting officer, the Bureau may assume that the offeror does not intend to challenge the protest and the Bureau shall not award to the challenged offeror.

(f) Within ten days after receiving a protest, the challenged offeror's response and other pertinent information, the contracting officer shall determine the representation declaration status of the challenged business concern and notify the protestor and the challenged offeror of the decision by certified mail, return receipt requested, and make known the option to appeal the determination to the Division of Contracting and Grants Administration (Central Office).

(g) If the declaration accompanying an offer is challenged and subsequently upheld by the Bureau Central Office, the written notification of this Bureau action shall state the reason(s). The Bureau Central Office may review the economic enterprise for possible suspension or debarment recommendations.

BIA 1480.903 Award in the face of protest.

(a) Award of a contract in the face of protest may be made on the basis of the written determination by the contracting officer. This determination is final for the Bureau unless it is appealed to the Bureau Central Office, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of appeal, the contract shall be presumed to be valid.

(b) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until the contracting officer has determined the validity of the representation, or ten days have expired since the contracting officer received the protest, whichever occurs first.

However, an award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest, or the supplies and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a timely protest of a representation declaration is filed with the contracting officer and received before award in response to a specific offer and solicitation, the contracting officer shall provide a notice to eligible offerors within one day that the award will be withheld and a time extension for acceptance is requested.

(d) If a protest of a representation declaration is filed with the contracting officer and received after award in response to a specific offer and solicitation, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay would prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no-cost agreement will be sought.

BIA 1480.904 Protest not timely.

In the event of a protest of representation declaration which is not timely, the contracting officer shall notify the protestor that the protest cannot be considered on the instant acquisition but has been referred for consideration in any future actions. However, the contracting officer may question at any time, before or after award, the representation declaration status of a self-declared Indian economic enterprise.

ATTACHMENT 1.—SET-ASIDE PROGRAM ORDER OF PRECEDENCE

Source preference	Reference (48 CFR)
Supplies:	
1. Indian economic enterprise set-aside under the Buy Indian Act.	Sections 8.001(a) and BIA 1480.503 and 504.
2. Bureau of Indian Affairs inventories or excess from Federal agencies.	Subpart 8.1.
3. Federal Prison Industries, Inc.	Subpart 8.6.
4. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7.
5. Wholesale Supply Sources (Stock Programs and Inventory Control Points such as GSA, VA and DOD depots).	41 CFR 101-26.3, 26.6 and 26.704.
6. Mandatory Federal Supply Schedules.	Subpart 8.4.

ATTACHMENT 1.—SET-ASIDE PROGRAM ORDER OF PRECEDENCE—Continued

Source preference	Reference (48 CFR)
7. Optional Use Federal Supply Schedules.	Subpart 8.4.
8. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
9. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
10. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Total Set-aside for Small Business concerns.	Section 19.504.
12. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
13. Partial Set-aside for Small Business concerns.	Section 19.504.
14. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
15. Other Commercial Sources (including educational and nonprofit institutions).	Subpart 6.1.
Services:	
1. Indian economic enterprise set-aside under the Buy Indian Act, including Indian roads and bridges.	Sections 8.001(a) and BIA 1480.402 and 403; 23 U.S.C. 204(e), and 41 U.S.C. 252(c)(2), as amended.
2. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7.
3. Mandatory Federal Supply Schedules.	Subpart 8.4.
4. Optional Use Federal Supply Schedules.	Subpart 8.4.
5. Federal Prison Industries, Inc.	Subpart 8.6.
6. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
7. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
8. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
9. Total Set-aside for Small Business concerns.	Section 19.504.
10. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Partial Set-aside for Small Business concerns.	Section 19.504.
12. Total Labor Surplus Area Set-aside for concerns that are not Small businesses.	Section 19.504.
13. Other Commercial Sources (including educational and nonprofit institutions).	Subpart 6.1.

Attachment 2

Department of the Interior, Bureau of Indian Affairs, Class Justification, For Use of Other Than Full and Open Competition in Acquisition of Supplies and Services From Indian Industry

1. Identity of agency, contracting activity, document, and statutory authority.

The Bureau of Indian Affairs (BIA) may use this Class Justification for other than full and open competition to acquire products and services of Indian industry pursuant to 25 U.S.C. 47, as amended. The statutory authority permitting use of other than full and open competition for acquisitions made pursuant to the Buy Indian Act is 41 U.S.C. 253(c)(5). In addition, the BIA is publishing an interim rule to govern implementation of section 23 of the Act of June 25, 1910, referred to as the "Buy Indian Act" and codified as 25 U.S.C. 47 as amended, and the implementing regulations of 48 CFR, chapter 14, appendix A, part 1480. The interim rule supports the policy and describes the BIA's procedures in its commercial acquisition relationships with self-certified, eligible Indian economic enterprises.

Further, section 7(b) of Public Law 93-638, as implemented by DIAR 1452.20-71, applies an Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. The Class Justification for use of other than full and open competition in the acquisition of supplies, services, and construction, as defined in BIA 1480.401(b), from Indian industry meets the requirements of FAR 6.302-5(c)(2).

2. Nature and description of the action/acquisition/requirement.

BIA may solicit offers and award contracts to eligible Indian economic enterprises to the exclusion of non-eligible offerors, in support of its mission and program activities. Contract awards with an estimated individual value up to $10 million may be for supplies, services, or construction as defined in BIA 1480.401(b), from self-certified, eligible Indian economic enterprises either through their own labor, skills, or efforts, or provided as regular dealers. BIA's policy is to give preference to eligible Indian economic enterprises through the use of set-asides in acquisitions to meet the Bureau's needs, as a means of fostering economic development and employment for Indian persons.

3. Description of efforts to ensure solicitation/offers from maximum number of sources practicable; determination of fair and reasonable cost; description of market survey to be conducted; statement of action to be taken to remove or overcome barriers to full and open competition.

The contracting officer shall certify, by separate memorandum, that the supplies, services, or construction to be acquired are available from two or more responsible, responsive, eligible Indian economic enterprises, and that the anticipated cost to BIA of the required supplies or services is determined to be fair and reasonable.

BIA will adhere to the Small Business Act Requirements for small purchases, while

continuing it policy of utilizing the Buy Indian Act. When the contracting officer is unable to determine in advance a potential award as an Indian small business set-aside, BIA is required to follow the order of preference in FAR 8.001. If an award is not or cannot be made to an eligible Indian firm that is responsible, responsive, and is price reasonable to BIA's solicitation, the set-aside notice will be cancelled. BIA shall then consider other authorized procurement set-aside programs before full and open competition.

The contracting officer may seek sealed bids or competitive proposals, as appropriate, and select sources in accordance with FAR. In response to an acquisition set-aside, when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices, or, when only one bid is received from such an enterprise and the contracting officer cannot determine the reasonableness of the bid price, or, when no responsive bids have been received from such enterprises, the contracting officer shall cancel the solicitation and reject all bids pursuant to a written determination. Completion of the acquisition shall be made either using negotiation or a new solicitation in accordance with FAR.

When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable and fair market price in response to an acquisition set-aside, the contracting officer shall make an award to that enterprise. However, the contracting officer shall then initiate action to increase competition in future solications as required by FAR.

4. Other facts supporting justification:

This class justification ensures that supplies, services, and construction, as defined in BIA 1480.401(b), procured for the benefit of Indians will be used to the maximum extent feasible to promote Indian employment and business development. This justification additionally supports BIA's policy in Indian preference requirement for employment and subcontracting opportunities under contracts for the benefit of Indians, or contracts made pursuant to statutes authorizing contracts with Indians. Through this class justification, BIA is, therefore, encouraging major initiatives for the economic development and employment of Indian persons.

5. Certification that justification is accurate and complete.

The contracting officer shall certify, by separate memorandum, that the information in this Class Justification is accurate and complete as it pertains to the proposed acquisition.

Approval

Based on the justification above, it is determined that it is in the Government's interest to permit set-aside acquisitions to eligible Indian economic enterprises. This Class Justification is made in accordance with FAR Subpart 6.3 and is approved pursuant to Section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949, as amended, and 41 U.S.C. 253(f). I certify that this justification is accurate and complete to the best of my knowledge. The expiration date of this justification is December 31, 2001.

Dated: January 4, 1991.

Anthony Howard,

Chief, Division of Contracting and Grants Administration.

Anthony Howard,

Bureau Competition Advocate.

Patrick A. Hayes,

Acting Deputy Commissioner of Indian Affairs.

Dated: May 1, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-21583 Filed 9-11-91; 8:45 am]
BILLING CODE 4310-02-M

federal register

Thursday
September 12, 1991

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Discretionary Grant Programs for Fiscal Year 1991; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Fiscal Year 1991 Competitive Discretionary Grant Programs Under the Missing Children's Assistance Act and the Availability of the Program Announcement Application Kit

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Public announcement of the Fiscal Year 1991 Competitive Discretionary Grant Programs under the Missing Children's Assistance Act, and the availability of the Application Kit for FY 1991.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of Competitive Discretionary Grant Programs under section 405 of the Missing Children's Assistance Act, title IV, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5771–5778, and announcing the availability of Application Kits.

Each program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria. Following the program announcements is a section that summarizes general application and administrative requirements.

The Application Kit contains application forms (Standard Form 424), the OJJDP Peer Review Guideline, the OJJDP Competition and Peer Review Procedures, and other supplemental information relevant to the application process.

DATES: All applications must be received by 5 p.m. e.d.t., October 28, 1991. Applications received after the deadline date will not be considered.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Requests for application materials and/or program inquiries are to be addressed to the attention of the OJJDP staff contact person identified in the specific program announcement as hereafter set forth.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY91, six new programs and four continuation programs constitute all section 405 funding areas. This Notice contains additional information on competitive discretionary programs as well as the announcement of the OJJDP Application Kit availability.

Funding Support for Private Nonprofit Organizations Involved with Missing and Exploited Children

Purpose

The Office of Juvenile Justice and Delinquency Prevention has initiated this program to assist nonprofit organizations serving missing and exploited children to expand, develop, and/or improve services to these children and their families.

Background

The problem of missing and exploited children is one of the most pressing concerns in our country today. Some are abducted by strangers, some by family members, some run away or are thrown away, some become lost. Many of them become victims of physical or sexual abuse or even victims of homicide.

The U.S. Congress took important steps to stimulate and support solutions to the problem by passing the Missing Children Act in 1982 and later, the Missing Children's Assistance Act in 1984. Since passage of the legislation, a growing and increasingly sophisticated network of agencies and organizations assisting missing and exploited children has evolved. This network consists of the National Center for Missing and Exploited Children (NCMEC), which serves as the national clearinghouse for information and assistance concerning missing children, 43 State clearinghouses, and a number of nonprofit organizations throughout the country. Along with funding support for the organizations and agencies mentioned, the Office of Juvenile Justice and Delinquency Prevention funds and coordinates research and demonstration programs, training and technical assistance for law enforcement, judges and prosecutors, and the Missing and Exploited Children Comprehensive Action Program, a community-based multi-disciplinary program being developed in sites across the country. The National Incidence Study of Missing, Abducted, Runaway, and Thrownaway Children in America (NISMART), released in May, 1990, identified distinct and separate problems affecting five categories of children who are missing or displaced. Other research has focused on the best approaches for treating recovered children, reuniting them with their families, and diminishing the trauma experienced by children who are required to testify in court. The increased understanding and knowledge of the problems faced by missing and exploited children will enable all of the agencies and organizations striving to assist these children to meet their needs more effectively and help prevent victimization of other children.

Program Goals

1. To assist established nonprofit agencies in the missing and exploited children's field to continue, expand, or establish services to missing and exploited children and their families;
2. To contribute to improved missing children's services to the community; and
3. To promote the continued organizational development of the nonprofits.

Program Objectives

1. To enhance the capacity of nonprofit missing children's agencies to provide direct support and services to individuals, families and communities impacted by the missing children's problem, and thus assist them to become more effective in providing direct services to children and their families.
2. To encourage new methods and enhanced services by nonprofit organizations for dealing with the problems of missing and exploited children.
3. To support the more established agencies in the missing and exploited children's field to allow them to continue their vital work.

Program Strategy

This program will provide grants in amounts of up to $75,000 per annum for up to 3 years to support implementation of new or enhanced services to be provided by nonprofit agencies, public agencies or combinations thereof in the following areas:

- Educating parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;
- Providing information to assist in the location and return of missing children;
- Aiding communities in the collection of materials that would be useful to parents in assisting others in the identification of missing children;
- Assisting missing children and their families following the recovery of such children;

• Providing services that minimize the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation;

• Development of expertise in the ramifications for families of missing children in order to provide effective crisis intervention and referral to appropriate victim services;

• Development of a dispute resolution component to help prevent family abductions; and

• Development of effective services for families of long-term missing children.

Proposed programs must address pertinent issues and problems in the area(s) selected from those listed above, as these funds are not provided for basic program operating expenses. Proposals should define the needs and/or problems, and describe the objectives, strategy and methodology to be employed. A brief review of the history of the issue and current knowledge and approaches to be addressed should be included. All eligible applications will be subject to peer review. Grants will be awarded to as many projects as funding allows.

Eligibility Requirements

Applications are invited from private nonprofit missing children's service agencies. A *nonprofit organization* means any corporation which: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. Applicants must furnish documentation of their section 501(c)3 nonprofit status as provided by the Internal Revenue Service. In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Other eligibility requirements include:

a. Clear documentation of linkages with local law enforcement, State Clearinghouses, and the National Center for Missing and Exploited Children as evidenced by letters from law enforcement and/or these other agencies that attest to specific cases or activities;

b. The amount of the Federal grant requested does not exceed 25% of the applicant's current operating budget which is documented by copies of tax returns for other appropriate documentation;

c. The agency/organization has been in operation for the past three years as documented by copies of tax returns or other appropriate documentation.

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. In addition, all applications must include the information required below in order to be eligible for consideration:

1. *Organizational Capability.* The applicant organization must have documented experience as an operating nonprofit agency serving missing and exploited children and their families. Applicants must demonstrate organizational experience and show how their capabilities will enable them to achieve the goals and objectives of this initiative. A section of the application should discuss program management and organization. The application must include a list of key personnel responsible for managing and implementing the program, their résumés and position descriptions.

2. *Program Goals and Objectives:* The applicant must demonstrate an understanding of the extent and nature of the problem of missing and exploited children within the applicant's jurisdiction; applicants must identify the project goals, and state the objectives in clear and measurable terms. A succinct statement demonstrating an understanding of how the proposed project will meet the goals of the program should be included in the application.

3. *Project Strategy:* Applicants must describe their proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, and program management should be included. A clear time-task workplan identifying major milestones and products must be included. A concise description of the products to be produced should be enclosed.

4. *Program Budget:* In addition to providing the budget information required in completing the Federal Application (Form 424), applicants shall provide a full and detailed budget showing how funds will be expended. A budget narrative providing justification for these costs must also be included.

Applications that include proposed noncompetitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Applicants who are receiving other funds in support of the proposed activity should list the names of the other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Applicants should provide the title of the project, name of the public or private grantor and amount to be contributed during this program period as well as a brief description of the program. The applicant agency and principals must also be cleared by a background check to be conducted by OJJDP. This precaution is being taken to assure the legitimacy of the organizations selected.

Selection Criteria

Applications submitted in response to this solicitation will be rated in accordance with the application review criteria set forth below:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate an understanding of the extent and nature of the problem of missing and exploited children. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program service elements directly linked to either the prevention or recovery of missing children and/or the provision of services to such children and their families. (25 points)

(4) The project management structure is adequate for the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. The applicant should provide documentation demonstrating appropriate linkages with law enforcement, State clearinghouses, and the National Center for Missing and Exploited Children, e.g., letters from local law enforcement agencies, judges and children's services organizations. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. The budget is clearly presented in a detailed manner and appropriate to the level of effort proposed. A budget narrative that explains and justifies the proposed line items is included. (5 points)

The applicant must provide evidence that the amount of the Federal grant will not exceed 25% of its current operating budget.

Award Period

The project period for this program is up to three years with each budget period being 12 months. Second and third year funding will be based upon grantees meeting performance standards at a satisfactory level during the previous budget period, and availability of funds.

Award Amount

Up to $600,000 will be available to support up to 24 assistance awards under this program initiative.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures listed at the end of this announcement.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., October 28, 1991. Those applications sent by mail should be addressed to Lois Brown, Training, Dissemination and Technical Assistance Division, OJJDP, room 705, 633 Indiana Avenue, NW., Washington, DC 20531, between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays or Federal holidays.

Contact

Lois Brown, Training and Technical Assistance Division, (202) 307–0598.

Prevention of Parent or Family Abduction(s) of Children Through Early Identification of Risk Factors

Purpose

The purpose of this program is to identify those children who are at risk of being abducted by a parent or family member. It is important to determine what factors are likely to place children at risk, and what is being done to prevent the occurrence of parent or family abductions.

Background

The 1990 National Incidence Study on "Missing, Abducted, Runaway, and Thrownaway Children in America," (NISMART), concluded that, "The Family Abduction problem has proved to be substantially larger in this study than most people had anticipated." It went on to say, "Thus, we especially recommend that major efforts be put into the prevention of family abductions."

The term "Family Abduction" refers commonly to the taking of a child by a parent during the course of a custody or divorce dispute, thereby preventing legitimate custody or visiting rights by the other parent. Family abductions can also include the taking of a grandchild by a grandparent, or the removal of a child from a foster home by the parent. Often the abductor believes that the taking is justified by circumstances; however, the act bypasses appropriate legal processes for resolving problems.

Realizing the scope and magnitude surrounding the problem of family abductions, OJJDP is funding a comprehensive study to examine closely the problems that lead to family abductions. The study will also assess and describe approaches that effectively deal with the problems.

Goals

To conduct a study that would:

- Learn more about the circumstances that are likely to precipitate the abduction of a child by a parent or family member, including the presence of domestic violence as a precipitating factor;
- Identify current models, if any, where effective prevention and intervention strategies strongly address the issues which are likely to precipitate an abduction; and
- Recommend effective remedies, training and technical assistance programs for judges, legal personnel, court social workers, and others concerned with family and child welfare to assist them with recognizing and preventing the occurrence of parental and family member abductions of children.

Objectives

- To investigate and document the circumstances and risk factors most likely to result in the abduction of a child by a parent or family member. Specifically, the presence and effect of domestic violence should be examined to determine the degree of its impact on this problem, but not to the exclusion of other circumstances and risk factors;
- To identify, test, and evaluate currently existing programs, public and private, that appear to be effective methods in the prevention and intervention of parent or family abductions; and
- To examine the roles of judges, attorneys and court social workers, and others concerned with family and child welfare to determine what can be done to assist them in the prevention of parent or family member abductions.

Products

The grantee is expected to produce the following products or reports during the program:

A. A summarization of findings, including the raw data, a list of sources from which information was obtained, and the period of time which was covered by the research.

B. An analysis of research data, including:

- The relative importance of risk factors, including the role of family violence, which may presage abductions;
- Legal and procedural processes which impinge upon problem resolution or action relative to abductions;
- Descriptions and identification of weaknesses and strengths of current approaches which deal with the problem of parent or family member abduction of children. Recommendations should include ways to improve upon current models and/or suggestions for the development of new ones.

C. Specifications for improving training, technical assistance, prevention strategies and intervention techniques for attorneys, judges, court social workers, and others concerned with family and child welfare. The training and technical assistance should specifically focus on:

- Identification of high risk cases; and
- Strategies for the prevention and intervention of abductions.

Program Strategy

OJJDP is actively soliciting applications that clearly recognize the problems associated with family abductions, and describe the objectives, strategies and methodologies to be employed in dealing effectively with the issue. A brief review of the history and current knowledge, as well as the approaches currently being employed to address the problem of family abductions, should be included. All applications will be submitted for peer review through a competitive process.

Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single-spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of a page only. The program narrative may not exceed 40 pages. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, résumés, and supporting charts and graphs).

Eligibility Requirements

Applications are invited from individuals, public and non-profit organizations, agencies, educational institutions or combination thereof. Applicants must demonstrate that they have experience in the design and implementation of the type of program for which they are applying.

Selection Criteria

All applications received will be rated on the extent to which they meet the following criteria:

(1) The need or problem to be addressed by the project is clearly stated. (25 points)

- The project clearly addresses and adequately justifies a need or problem under the Missing Children Program (10 points)
- The applicant demonstrates an understanding of the extent and nature of the need or problem, including associated factors such as parental custody laws. (15 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

- The objectives relate directly to the problem to be studied. (10 points)

The objectives are specific and yield identifiable products. (10 points)

(3) The project design is sound and contains program elements directly related to the achievement of project objectives. (30 points)

- The project design demonstrates a sound approach to addressing the problem. (15 points)
- Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (15 points)

(4) The project management structure is adequate to the successful conduct of the project. (10 points)

- General and specialized experience and competence of key project staff are provided. (10 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

- Applicant provides an organizational capability statement which demonstrates that the applicant has the technical, substantive and financial capabilities to administer the project effectively. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. The application must include a complete budget and budget narrative for all proposed costs. (5 points)

Award Period

The project period will be for 42 months, divided into three budget periods, with stage I lasting 18 months. Stages II and III will utilize the remaining 24 months.

Award Amount

The total amount available is $450,000. Stage I will be funded in an amount not to exceed $150,000. Stages II and III together will be funded at a level of approximately $300,000.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., October 28, 1991. Those applications sent by mail should be addressed to Gregory Thompson, Research and Program Development Division, OJJDP, room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP at the address above between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Gregory Thompson, Research and Program Development Division, 202/307–5929.

Missing Children: Program to Increase Understanding of Child Sexual Exploitation

Purpose

To document the problem of children, especially missing children, who become the victims of sexual exploitation, including prostitution and pornography.

Background

The first report of the National Incidence Studies, "Missing, Abducted, Runaway, and Thrownaway Children in America" (NISMART), provided the first reliable and accepted understanding of the extent and nature of the missing child problem. This newly acquired information assists Federal, State, and local planners in their efforts to design interventions to prevent and handle various types of missing child cases. The findings in this report indicated that many children who are missing become the victims of sexual exploitation, including prostitution and pornography. However, little has been documented about the extent of the problem, the precipitating circumstances surrounding incidence, or law enforcement, judicial and adult and juvenile justice systems' response to the problem.

A major recommendation from the OJJDP-sponsored 1991 Sexually Exploited Children's Program Options Seminar emphasized the usefulness of a summarized and published report on child prostitution and child pornography case laws and statutes from all 50 states. Along with the need for a published legislative analysis is the need for clear and consistent definitions of the different terms that are used in the field. Definitions for child sexual abuse, child molestation, and child sexual exploitation are often different, overlapping, and confusing not only for national analysis, but also for data gathering within the States. The legal definitions should be consistent within and among the States.

Goal

The goal of this project is to learn more about the missing children problem as it relates (1) to children who become the victims of sexual exploitation, including prostitution and pornography; (2) to the precipitating circumstances surrounding their path to

this problem, and (3) to the response of the law enforcement, social welfare, and judicial systems to this serious and growing problem.

Objectives

The project should address the following objectives:

- To review and identify the most relevant and current literature on the subject of child sexual exploitation and missing children involved in prostitution and pornography;
- To describe the process by which children, missing or not, enter or are brought into prostitution and pornography;
- To describe Federal and State laws and pertinent case laws used in the prosecution and punishment of offenders;
- To identify problems and obstacles of the law enforcement, prosecution, judicial and correction systems in handling sexual exploitation cases, in respect to their handling of both offenders and victims, and to recommend solutions;
- To provide a comprehensive report addressing each of the objectives for operational leaders, implementation of recommended solutions, and the future of additional research.

Program Strategy

The project will be carried out as one program with several tasks. Task I of the project will be an extensive review of the literature. Task II will be a study of children who are involved in prostitution and pornography. This will be followed by Task III, a study of the case law and Federal and State laws pertaining to the areas of prostitution and pornography, and Task IV, a case study of problems and obstacles faced by the prosecution, law enforcement, judicial and correction systems in handling exploitation cases.

Task I: A review of the literature should include the most current research and findings dealing with missing children who are sexually exploited, i.e., through child pornography and child prostitution. The literature should include, but not be limited to, documents involving runaway and thrown away juveniles as well as juveniles who are still living at home and are victimized. The research should address any common characteristics of the victim and/or the offender. Research projects and findings of a similar nature should be included.

A particular area that should be addressed within the review of literature is the consistency of definitions that are currently used by the law enforcement and judicial research fields in describing: "child sexual exploitation", "child sexual abuse" and "child sexual molestation." Another concern to be addressed is how "extra" and "intra" familial abuse problems are defined.

The review should include a look at research detailing the family life of the juvenile with regard to parental characteristics, history of sexual abuse, prevalence of drugs and alcohol in the home and educational history.

The review of the literature will result in a report detailing the current state of the field of research involving missing children, as well as children who remain at home, who are sexually exploited, sexually abused or sexually molested.

Task II: A study of children, missing or not, who are or were involved in prostitution and pornography. This task should look at the previous contacts these children have had with the criminal justice, juvenile justice and social welfare systems. Questions that should be addressed include:

—What was their earlier family situation?
—Were they offered help or alternatives by the above systems when, and if, they were in contact with them?
—Who, voluntarily or involuntarily, brought them into a life of prostitution or pornography? List by the type of individual, e.g., pimp, teacher, scout leader, friend, relative, etc.

This task should be guided by the review of the literature so as not to duplicate previous works.

Task III: A legal analysis of Federal, State, and local laws, statutes and precedent cases should be completed. The main emphasis of this task will be in identifying the different laws related to presentation of evidence in the trials and the elements of a crime that are necessary for charging offenders. In the study of evidentiary law, statutes and cases laws concerning the use of children as witnesses and use of video cameras in place of face to face confrontations should be reviewed. Also, within this analysis the most frequently used legal definitions across the 50 States of child molestation, sexual abuse and sexual exploitation should be given.

Task IV: A case study of child sexual exploitation cases that have entered the criminal justice, juvenile justice and social service systems to identify problems encountered in handling these cases and the responses of these systems toward child sexual exploitation. Within this task, sites will be selected for further study. Identification of prosecutorial problems in presenting evidence and problems associated with compelling witnesses and victims to testify should be included. Additionally, a study of recently closed cases should be done to determine the disposition of the case and the penalty, if any, associated with the conviction. What were the problems that judicial and corrections officials faced in dealing with these cases? What were the outcomes of the treatment and rehabilitation for the child? How available is it and who provides it and for how long? Also, a look at the problems confronting law enforcement officers in this area should be included.

To provide direction, guidance and oversight to the program in carrying out its function, an independent project advisory board will be appointed with OJJDP approval. All technical and subject matter portions of the program will be guided by the comments and recommendations of the project advisory board. It may be necessary to change or supplement project advisory committee members at different stages of the project. The objective will be to select technical and subject matter experts capable of addressing issues related to each program stage. The project advisory board members should have combined expertise in juvenile justice standards, juvenile courts, missing children issues, and legal expertise dealing with sex-related offenses involving juveniles. In assembling the advisory board, an effort should be made to include minorities and women.

Products

This project should produce several reports including:

(1) An assessment report based on the literature that details the history of research in this field. Also, the report should detail previous findings that have been made with reference to typical offender and victim characteristics. Within this report, recommended universal definitions should be formulated for "child sexual abuse," "child sexual exploitation," and "child sexual molestation." These definitions should clarify the differences between each crime.

(2) A report documenting the different laws existing within the States and Federal judicial systems for child sexual abuse, child sexual exploitation and child molestation. Major hindrances in prosecuting these cases should also be discussed within this report. Further recommendations for improvements in the systems should be included in the conclusion of this report.

Eligibility Requirements

Applications are invited from public and private non-profit agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have knowledge and experience in the design and implementation of large scale, multi-site research; in juvenile prostitution and pornography issues; in research dealing with missing, runaway, or thrown away youth; and both the juvenile justice and criminal justice systems in general.

Applicants must provide further evidence of their management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); and a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of a page only. The program narrative may not exceed 40 pages. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, résumés, and supporting charts and graphs).

Selection Criteria

All applicants, at a minimum, will be rated on the extent to which they meet the following selection criteria.

(1) The problem to be addressed by the project is clearly stated. (15 points)

- Problems to be addressed are based upon issues that have particular impact on current Missing Children's Program priorities. (7 points)
- The applicant demonstrates broad knowledge of the current situation and practices and is aware of research and program development needs. (8 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

- The applicant fully explains project's objectives. (10 points)
- Objectives are clear and measurable. (10 points)

(3) The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 points)

- The design contains research elements directly related to the program objectives. (13 points)
- The applicant provides a detailed work plan describing and methodology of the program. (12 points)

(4) The project management structure is adequate to the successful conduct of the product. (15 points)

- The applicant provides specific guidelines and timelines with regard to the research program activities. (10 points)
- The applicant explains how management structure is consistent with the needs of the program. (5 points)

(5) Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (20 points)

- The applicant demonstrates knowledge and experience with missing and sexually exploited children issues, particularly with regard to the area of study addressed. (10 points)
- The applicant identifies staff qualified to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken and budgeted costs are justified and directly related to the achievement of the program objectives. (5 points)

Award Period

The award period will be 18 months.

Award Amount

A cooperative agreement will be awarded to the successful applicant. The project period will be 36 months. OJJDP has allocated up to $400,000 for this grant. This announcement falls under number 16.543 of the Catalog of Federal Domestic Assistance, "Missing Children's Assistance." (This number and title are provided for completing Block 10 of the SF 424 Application for Federal Assistance.)

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received no later then October 28, 1991. Applications must be sent by mail or hand delivered to OJJDP by 5 p.m. e.d.t., on that date. Those applications sent by mail should be addressed to Jeffrey Slowikowski, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC, 20531, between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays, or Federal holidays. Applications being hand delivered should be delivered to the above address. Any applications received after the deadline will not be considered.

Contact

Jeffrey Slowikowski, Research and Program Development Division, (202) 616–3646.

Effective Screening of Child Care and Youth Service Workers

Purpose

The purpose of this program is to provide a comprehensive picture of what screening practices, including criminal records checks, are being utilized by both the public and private sector and the effectiveness of these practices in protecting children and youth from abduction, abuse, and exploitation by adults who prey on children.

Background

An effective pre-employment screening is needed for adult volunteers and paid personnel who work in agencies and organizations having direct contact with children and youth. While most such workers are conscientious individuals of high moral values, too often an employee has been known previously to have victimized young persons.

Child sexual abuse, exploitation and molestation present special problems for employers and volunteer organizations dealing with children. Pre-employment screening measures should be sufficient to identify not only individuals with unintended dispositions toward abusive behavior, but also those people who willfully prey on youngsters assigned to their care and misrepresent their past records and identification.

The DeConcini-Specter Amendment of 1984 required states to enact laws that would mandate nationwide criminal record checks for all staff and employees at child-care and juvenile

detention, correction or treatment facilities. The amendment did not authorize the FBI to respond directly to private employers' requests for screening, without which national offense records screening would be less effective, but left it up to each state to devise a system for obtaining access to the FBI files.

States vary greatly in requiring criminal background checks for prospective employees of agencies having responsibility for the care of juveniles. Not only do the states differ in the requirements for criminal background checks, they vary in the types of information available. In some cases, the arrest information for child abuse or child sexual exploitation offenses may be in the juvenile or family court and not entered in the regular state criminal histories at all. Furthermore, in some cases the initial offense charges may be plea bargained to a lessor offense that may not adequately reflect the more serious physically and/or sexually assaultive behavior of the initial charges.

Because of the variety existing in State laws and requirements, the need to determine the types of screening and background checks being utilized becomes readily apparent.

Goal

To provide a comprehensive picture of what screening practices, including criminal records checks, are being utilized by both the public and private sector and the effectiveness of these practices in protecting children and youths from abduction, abuse and exploitation by adults who prey on children.

Objectives

- To assess and determine the effectiveness of the different types of criminal records checks and screening tests that are currently in use by public, and private youth serving organizations.
- To determine and recommend the steps necessary to develop a national child care and youth service worker screening and background checks program which would be feasible and effective and which could be adopted by public and private organizations, State agencies, and replicated nationwide.
- To list the types of employment and volunteer organizations and professionals that should be encouraged to use records checks and pre-employment screening of all applicants.
- To estimate from available data the national population of all those involved in the positions identified above

Program Strategy

This project will require the fulfillment of three tasks in completing the program.

(1) The first task essential to the project will be the completion of a survey of the States to determine the extent of background and employment screening currently being done. This task should examine State laws that require background checks as well as licensing regulations that also mandate background checks. A random look into youth-serving agencies should also be completed to determine the extent of pre-employment screening among several occupations. In sites where there have been publicized cases involving workers accused of child exploitation, abuse or molestation, an effort should be made to examine the screening process, if any, that was utilized. This research should not be limited to employment or professional positions and should include any volunteer positions that involve contact with children or youth.

As part of this study, a determination should be made as to the extent of the background checks that are used:

- Are name checks used or are fingerprints used?
- Are the checks done locally or nationally?
- Furthermore, what is the extent of employment screening that is used?
- Are questionnaires used to discover the suitability for the job of potential volunteers and employees?

(2) Within the second task, a set of criteria should be developed to determine the effectiveness of the background checking and screening processes now available. This criteria should take into account the likelihood of identifying potential problem employees and/or volunteers. This stage of the project should make recommendations of other types of checks that are available and further questions that may be asked of the subject being screened. Another issue to be addressed here is the need and/or use for a national directory of people accused of child-related crimes. Technicalities such as the inclusion of a person who was not formally charged or one who was simply expelled from an organization without criminal charges is part of this issue.

(3) The third task is the development of a comprehensive listing of all professions, jobs, agencies, organizations and other related activities that have contact with children and youth that should be subject to background and screening checks. From this list, the grantee should provide an estimate of the number of people that are currently employed or who volunteer with children and youth serving agencies and organizations.

To provide direction, guidance and oversight to the program in carrying out its function, an independent project advisory board will be appointed with OJJDP approval. All technical and subject matter portions of the program will be guided by the comments and recommendations of the project advisory board. It may be necessary to change or supplement project advisory board members for different stages of the project. The objective will be to select technical and subject matter experts capable of addressing issues related to each project stage. The project advisory board members should have combined expertise in juvenile justice standards, juvenile courts, and legal expertise dealing with sex related offenses involving juveniles. An effort should be made to include minorities and women.

Products

(1) A detailed report on the different types of background and screening checks that are currently being used by the agencies and states studied and their effectiveness.

(2) A second report should include the data from the population estimates and a listing of all positions and organizations involved in the handling of or delivery of service to children and youth.

Eligibility Requirements

Applications are invited from public and private agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have knowledge and experience, or both, in research involving children and youth, as well as experience in legal research of this nature. The applicant should indicate some knowledge in the juvenile justice area. Applicants must further evidence the management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a

project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of a page only. The program narrative may not exceed 40 pages. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, résumés, and supporting charts and graphs).

Selection Criteria

All applicants, at a minimum, will be rated on the extent to which they meet the following selection criteria.

(1) The problem to be addressed by the project is clearly stated. (15 points)

- Problems to be addressed are based upon issues that have particular impact on current Missing Children's Program priorities. (7 points)
- The applicant demonstrates broad knowledge of the current situation and practices involving missing children and record checks and screening and is aware of research and program development needs. (8 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

- The applicant fully explains the project's objectives. (10 points)
- Objectives are clear and measurable. (10 points)

(3) The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 points)

- The design contains research elements directly related to the program objectives. (12 points)
- The applicant provieds a detailed work plan describing the methodology of the program. (13 points)

(4) The project management structure is adequate to the successful conduct of the product. (15 points)

- The applicant provides specific guidelines and timelines with regard to the research program activities. (10 points)
- The applicant explains how the management structure is consistent with the needs of the program. (5 points)

(5) Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (20 points)

- The applicant demonstrates knowledge and experience with missing and exploited children issues, particularly with regard to the area of study addressed. (10 points)
- The applicant identifies staff qualified to support the project successful. (10 points)

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken and budgeted costs are directly related to the achievement of the program objectives. (5 points)

Award Period

The award period will be 12 months.

Award Amount

A cooperative agreement will be awarded to the successful applicant. The project period will be 24 months. OJJDP has allocated up to $200,000 for this grant. This announcement falls under number 16.543 of the Catalog of Federal Domestic Assistance, "Missing Children's Assistance." (This number and title are provided for completing Block 10 of the SF 424 Application for Federal Assistance.)

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received no later than October 28, 1991. Applications must be sent by mail or hand delivered to OJJDP by 5 p.m. e.d.t., on that date. Applications sent by mail should be addressed to Jeffrey Slowikowski, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 633 Indiana Avenue, NW., Washington DC 20531. Hand delivered applications should be delivered to the address listed above between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays, or Federal holidays. Any applications received after the deadline will not be considered.

Contact

Jeffrey Slowikowski, Research and Program Development Division, (202) 307–0586.

Training and Technical Assistance for Private Nonprofit Organizations Involved with Missing and Exploited Children

Purpose

The purpose of this program is to provide training and technical assistance to those agencies involved in assisting missing and exploited children and their families.

Background

There are many private nonprofit and voluntary organizations involved in assisting missing and exploited children and their families located in various cities around the nation. These agencies vary greatly in the types and levels of services provided as well as general level of expertise. Some of these nonprofit organizations may lack experience in organization, fundraising and management. Some local organizations do not provide a full range of services to their constituency. Many nonprofit organizations lack expertise in use of specific techniques needed by organizations working in the field. There is also a need for extensive networking among these organizations in order to develop standards and share information.

Goal

To achieve a high level of skill, sophistication and expertise among the private nonprofit agencies and other appropriate organizations serving missing and exploited children by providing technical assistance and training to improve their capacity to engage successfully in activities that will prevent the abduction and exploitation of children, assist in the recovery of children, and provide services to child victims and their families.

Objectives

(1) To assess existing service, training and technical assistance materials and identify training needs of the nonprofit organizations in the missing and exploited children's field. This needs assessment, along with guidelines stipulated by OJJDP, will frame the basis for curriculum development and technical assistance. Also included in the needs assessment phase will be the identification of those agencies targeted for assistance under this program.

(2) To design and develop a training curriculum and technical assistance plan. The plan may include development of operational and management standards and a plan for certification of the private voluntary organizations as

well as facilitation of the formation of a national organization.

(3) To implement a training curriculum and technical assistance plan through four regional training workshops, supported by additional dissemination of relevant materials.

Program Strategy

OJJDP will select one organization to provide training and technical assistance to the nonprofit organizations in the missing and exploited children children field. A project advisory committee consisting of nonprofit organizations (NPOs) and independent experts who meet with OJJDP approval will be established to offer guidance and recommendations to the provider. The technical assistance provider may also draw upon information available from the National Center for Missing and Exploited Children, and from information gathered by OJJDP at a preliminary meeting of nonprofit organizations at which there was a discussion of the needs of the field.

The project advisory committee will also oversee the selection of the nonprofit organizations to be trained. To be considered by the committee for training and technical assistance, these organizations must meet the following criteria:

(1) Provide documentation of their section 501(c)(3) nonprofit status as provided by the Internal Revenue Service;

(2) Provide two letters of recommendation demonstrating appropriate linkages with law enforcement, State clearinghouses, and the National Center for Missing and Exploited Children. At least one letter should be from a law-enforcement official with whom the organization has worked in the past year on a missing or sexually exploited child case. The other letter should be from someone with whom the organization has worked closely on a case or program and should be from another law-enforcement officer, a Government official, a State Clearinghouse or the National Center for Missing and Exploited Children.

Training and technical assistance should focus on, but need not include all of the following, internal structure and credibility, case protocol and documentation, victim assistance, coordination with law enforcement, photo dissemination, reunification preparation, assistance and follow up, issue and prevention education, community outreach, referrals, networking, information exchange, improving service delivery, and advocacy. The grantee may provide assistance in the development of national standards including a plan for certification and may help facilitate the formation of a national organization of non-profit organizations serving missing and exploited children.

A central strategy of training and technical assistance will involve the nonprofit organizations in learning through participation in planning and development, as well as utilizing nonprofit practitioners having specific areas of expertise as trainers.

Products

Specific products to be produced during this project should include:

- A needs assessment and plan for the delivery of training and technical assistance;
- Operational and management standards which may include a plan for certification of the nonprofit organizations;
- Curriculum in one or more areas where training is needed based upon the needs assessment.

Eligibility Requirements

Applications are invited from public and private institutions of higher education, public agencies, and private nonprofit organizations. A *nonprofit organization* denotes any corporation which: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. Applicant organizations must provide documentation of their section 501(c)3 nonprofit status as provided by the Internal Revenue Service. In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant. All co-applicants must meet the eligibility requirements specified below.

In order to be eligible for consideration, the applicant must meet the following criteria:

(1) Organizational Capability

a. The applicant organization must have documented experience as an organization providing training and technical assistance nationwide to private nonprofit organizations involved with children and young people. This experience should include developing curricula for specialized needs and providing technical assistance in program development, organizational, and operational management. Experience with the missing and exploited children's field would enhance eligibility.

b. The key personnel must have had experience managing a nationwide training and/or technical assistance program for private nonprofit organizations.

c. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

d. The application must include an organizational chart, a list of key personnel responsible for managing and implementing the program, position descriptions, and resumés of key personnel.

(2) Program Goals and Objectives

A succinct statement demonstrating an understanding of the goals and objectives of the program should be included in the application.

(3) Project Strategy

Applicants should describe their proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, and program management should be included. A clear time-task workplan identifying major milestones and products should be a part of the application. A concise description of the products to be produced should be enclosed.

(4) Program Budget

Applicants should provide a 12-month budget with a detailed justification for all costs, including the basis for computation of these costs.

Selection Criteria

Those interested in responding to this solicitation should submit proposals

(applications) designed in accordance with the application review criteria set forth below:

(1) The problem to be addressed by the project is clearly stated. The criterion includes a clear, concise, statement of the problem to be addressed in this program. The problems of nonprofit organizations, particularly those in the missing and exploited children's field are discussed. A knowledge of training and technical assistance available and of the type of materials needed is evidenced. (10 points)

(2) The objectives of the project are clearly defined. The objectives to be achieved by the project must be clearly defined and consistent with the needs in the field. (15 points)

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives. The program strategy to implement the project design is delineated. Program elements relate to the achievement of the project objectives. A description of how the plan for the delivery of training and technical assistance is to be developed is included, along with a time-task implementation identifying major milestones and products. (30 points)

(4) Organizational and programmatic capability is demonstrated. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Evidence of knowledge and experience with relevant social issues, juvenile justice issues, and systems function is presented. Fiscal integrity and organizational stability are demonstrated over time. (20 points)

(5) The project management structure is adequate to support successful conduct of the project. Management has demonstrated the ability to implement a project of this scope successfully. Management evidences adherence to sound management and fiscal practices. (15 points)

(6) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed to be undertaken. The budget is clearly presented in a detailed manner and appropriate to the level of effort proposed. A budget narrative that explains and justifies the proposed line items is included. Economic efficiency in program development, implementation and administration is demonstrated. (10 points)

Award Period

The project period for this program is three years with each budget period being 12 months. Second and third year funding will be based upon grantees meeting performance standards at a satisfactory level during the previous budget period, and availability of funds.

Award Amount

The award amount for the initial budget period is $250,000.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., October 28, 1991. Those applications sent by mail should be addressed to Lois Brown, Training, Dissemination, and Technical Assistance Division, OJJDP, room 705, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 705, 633 Indiana Avenue NW., Washington, DC 20531, between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays or Federal holidays.

Contact

Lois Brown, Training, Dissemination, and Technical Assistance Division, (202) 307–0598.

Missing Children: Field-Initiated Programs

Purpose

Within the Field-Initiated Programs, OJJDP encourages eligible parties to develop promising and new ideas that are relevant to the mission of OJJDP's Missing and Exploited Children's Program. Applications are invited which address certain specific priority areas of the Missing and Exploited Children's Programs for Fiscal Year 1991. These priority areas are listed below.

- Prevention and Education—Keeping children from becoming missing, abducted, runaway and thrown away children is closely associated with education and requires innovative and various prevention approaches.
- Community Based Programs—Public agencies and nonprofit groups working in the area of missing children must work cooperatively to maximize resources and share information that will prevent children from becoming missing, expedite recoveries and provide treatment for missing children and their families. The involvement of residents, neighborhood organizations and institutions is an essential element of successful programs.
- Victims—Public and private agencies and organizations should implement policies and practices that will improve services for missing children and their families. Children who have been missing have too frequently been victimized by sexual exploitation and must be provided appropriate treatment.
- Information Systems, Support and Statistics—Agencies serving missing children require accurate, accessible, comprehensive and timely information to develop effective policies and allocate resources to enhance missing children programs and reduce the incidence of such events.

Background

Customarily, the research, development and training programs which OJJDP has sponsored have addressed specific activities mandated by Congress. The Field-Initiated Program, however, invites imaginative and innovative approaches of researchers and practioners to the discretionary activities authorized by section 405(a) of the Act. Those approaches include research, demonstration, or service programs designed:

(1) To educate parents, children and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) To provide information to assist in the location and return of missing children;

(3) To aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) To increase knowledge of and develop effective treatment pertaining to the psychological consequences on both parents and children of:

a. The abduction of a child, both during the period of disappearance and after the child is recovered and

b. The sexual exploitation of a missing child;

(5) To collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases;

(6) To address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active

participation of children and their families in cases involving abuse or sexual exploitation of children;

(7) To address the needs of missing children, as defined in section 403(1)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (the Act), 42 U.S.C. 5772(1)(A), and their families following the recovery of such children;

(8) To reduce the likelihood that individuals under 18 years of age will be removed from the control of his or her legal custodians without the custodians' consent.

Goal

To promote Field-Initiated applications with the intention of preventing the occurrence of missing children and resulting detrimental effects.

Objectives

- To promote and support research, development, demonstration and service programs which address innovative approaches toward improving existing practices and policies related to activities identified in section 405(a) of the Act 42 U.S.C. 5775(a);
- To determine what influence domestic violence has as a contributing factor to the occurrence of missing children;
- To encourage new methods for addressing the issue of missing children; and
- To develop knowledge that will lead to new techniques, approaches and methods addressing the problems of missing and exploited children and the prevention and deterrence of abduction and exploitation.

Program Strategy

Through the Field-Initiated Programs, OJJDP is actively solicting innovative program proposals. Applications should define the needs and/or problems and describe the objectives, strategy and methodology to be employed. A brief review of the history of the issue and current knowledge and approaches for addressing the issue should be included. Through a competitive process, all applications will be subject to peer review. Grants will be awarded to as many projects as funding allows.

Eligibility Requirements

Applications are invited from individuals, public and non-profit organizations, agencies, educational institutions, or combination thereof. Applicants must demonstrate that they have experience in the design and implementation of the types of programs for which they are applying.

Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); and a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed doubled spaced on one side of a page only. The program narrative may not exceed 40 pages. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, résumés, and supporting charts and graphs).

Selection Criteria

All applications received will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. (25 points)

- The project clearly addresses a need under the Missing Children Program. (10 points)
- The applicant demonstrates an understanding of the extent and nature of the problem. (15 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

- The objectives relate directly to the problem to be studied. (10 points)
- The objectives are specific and yield identifiable products. (10 points)

(3) The project design is sound and contains program elements directly linked to the achievement of the project. (30 points)

- The project design demonstrates an innovative approach to addressing the problem. (15 points)
- The applicant provides a work plan with a timeline which indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (15 points)

(4) The project management structure is adequate to the successful conduct of the project. (10 points)

- General and specialized experience and competence of key project staff are provided.

(5) Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (10 points)

- The applicant provides an organizational capability statement which demonstrates that the applicant has the technical, substantive and financial capabilities to administer the project effectively.

(6) Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken. The application includes a justified budget with budget narrative for all proposed costs. (5 points)

Award Period

The grant period is for 18 months.

Award Amount

The total amount available is $175,000. Award amounts will be subject to negotiation. We anticipate funding three to five projects with available funds.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., October 28, 1991. Those applications sent by mail should be addressed to Gregory Thompson, Research and Program Development Division, OJJDP, Room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to the address listed above between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Elen Grigg, Research and Program Development Division, (202) 307–5929.

General Application and Administrative Requirements

For all assistance awards funded under Title IV—Missing Children's Assistance Act, priority will be given to applicants who utilize volunteers in locating, reuniting, and providing other

services to missing children and their families. In order to receive assistance for a fiscal year, applicants must give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

Eligible Applicants

Applications are invited from eligible agencies, institutions or individuals, public or private. Private-for-profit organizations are not eligible for special emphasis grants but are for other grants; however, they must waive their fee in order to be eligible.

Applicants must also demonstrate that they have the management and financial capability to implement a project of this size and scope effectively. Applicants must demonstrate that they have management capability in order to be eligible for funding consideration.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. All applications must include the information required by the specific solicitation as well as the Standard Form 424.

Applications that include proposed non-competitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Applicants who receive order funds in support of any of the proposed activities should list the names of the other organizations that are providing or will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Also, the applicant must provide the title of the project, the name of the public or private grantor, the amount to be contributed during this program period, and a brief description of the program.

An original and two copies of the application are required. To facilitate the review of the applications, two additional copies are requested. Applications and copies must be sent to the following address: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., on the date specified at the beginning of this announcement. Delivered applications must be taken to the designated room at the address mentioned above between the hours of 8 a.m. and 5 p.m. e.d.t., except Saturdays, Sundays, or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

To comply with Executive Order 12373, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

Application Review Process

Applications will be initially screened to determine if the basic eligibility requirements have been met, (e.g., an application must include a completed and signed Form 424, including a budget with narrative; evidence of linkages with Law Enforcement; an operational program for three years and evidence of the agency total budget for the previous year.) Applications will be reviewed by a panel of experts who will make recommendations to the Administrator. The panel will assign numerical values in rating competing applications based on the point distribution in the Selection Criteria for each specific program. Peer Reviewers' recommendations are advisory only and the final award decision will be made by the Administrator. Those applications receiving a score of 65 or higher will be eligible for funding consideration, provided that necessary programmatic and budgetary revisions are successfully negotiated.

Evaluation

OJJDP requires that funded programs contain plans for continuous self-assessment to keep program management informed of progress and results. Many funded projects will be considered for participation in independent evaluations initiated by OJJDP. Project management will be expected to cooperate fully with designated evaluators.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The circulars, along with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual includes information on allowable costs, methods of payment, audit requirements, accounting systems, and financial records.

Civil Rights Requirements

Sec. 809(c)(1) of the Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968, as amended, 42 U.S.C. 3789d(c)(1), applicable to OJJDP funded programs and projects under Sec. 292(b) of the JJDP Act, 42 U.S.C. 5672(b), provides that no person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title. Recipients of funds under the Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1974, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1974; and the Department of Justice Non-Discrimination Regulations 28 CFR part 42, subparts C, D, E and G. Upon request, applicants shall maintain such records and submit to OJJDP or OJP timely, complete and accurate information regarding their compliance with the foregoing statutory and regulatory requirements.

In the event a Federal or State court or a Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

Drug-Free Workplace

Title V, section 5153 of the Anti-Drug Abuse Act of 1988 provides that all grantees of Federal funds, other than an individual, shall certify to the granting agency that it will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against

employees for violations of such prohibition.

• Establishing a drug-free awareness program to inform employees about:

—The danger of drug abuse in the workplace;

—the grantee's policy of maintaining a drug-free workplace;

—any available drug counseling, rehabilitation and employee assistance programs; and,

—the penalties that may be imposed upon employees for drug abuse violations.

• Making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement of notification prohibiting controlled substances in the workplace.

• Notifying the employee that as a condition of employment in such grant, the employee will:

—abide by the terms of the statement; and,

—notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

• Notifying the granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction.

• Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted.

• Making a good faith effort to continue to maintain a drug-free workplace.

The U.S. Office of Management and Budget, in collaboration with other Federal executive agencies, including the Department of Justice, has developed regulations to implement the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, "Audits of State and Local Governments," which establishes regulations to implement the Act. OMB Circular A–128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to OJJDP grantees.

OMB Circular A–133 outlines the requirements for institutions of higher education, hospitals and other nonprofit organizations to have audits performed.

Governmentwide Debarment and Suspension (Nonprocurement)

This Subpart of 28 CFR part 67, provides that executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and non-financial assistance and benefits. Debarment or suspension of a participant in a program by one Agency has governmentwide effect. It is the policy of the Federal Government to conduct business only with responsible persons, and these guidelines will assist agencies in carrying out this policy.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction (OJP Form 4061/1). All direct recipient grantees must complete an OJP Form 4061/1 prior to entering into a financial agreement with subrecipients. This requirement includes persons, corporations, etc. who have critical influence on or substantive control over the award. The direct recipient will be responsible for monitoring the submission and maintaining the official subrecipient certifications.

Certification Regarding Debarment, Suspension, Ineligibility and Other Responsibility Matters—Primary Covered Transactions (OJP Form 4061/2). Certifications must be completed and submitted by grantees of categorical awards to the grantor agency program officer during the application stage.

Disclosure of Lobbying Activities

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or guarantee a loan, to disclose lobbying. The term "recipient," as used in this context, does not apply to any Indian tribe or to tribal or Indian organization.

A person who requests a Federal grant, cooperative agreement or contract exceeding $100,000 is required to file a written declaration with OJP. The declaration shall contain:

• A certification that addresses payment made or to be made with both Federal or non-Federal funds for influencing or attempting to influence persons in the making of Federal awards.

• "Disclosure of Lobbying Activities" must be submitted if payments were made with non-Federal funds and must contain the following information with respect to each payment and each agreement:

—Name and address of each person paid, to be paid or reasonably expected to be paid;

—Name and address of each individual performing the services for which payment is made, to be made or reasonably expected to be made; and

—The amount paid, how the person was paid and the activity for which the person was paid, is to be paid or is reasonably expected to be paid.

• Copies of certification and disclosure of lobbying activities, as outlined above, received from subgrantees contractors or subcontractors under a grant, cooperative agreement or contract for Federal subgrants exceeding $100,000.

A subgrantee, contractor or subcontractor under a grant, cooperative agreement or contract, who requests or receives Federal funds exceeding $100,000 is required to file a written declaration, as described above, with the person making the award.

A declaration must be filed at the end of each calendar quarter in which there occurs any event that materially affects ($25,000 or more) the accuracy of the information contained in any declaration previously filed for a grant, cooperative agreement, contract, subgrant or subcontract. These declarations shall be filed as follows:

• Grant, cooperative agreement and contract recipients shall send their amended declarations and copies of amended declarations for Federal subgrants to the Office of the Comptroller not later than 30 days after the end of each calendar quarter.

• Subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract shall send their amended declarations each quarter to the person who made their subgrant.

Declarations are also required for extensions, continuations, renewals, amendments and modifications exceeding $100,000.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded

in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Suspension or Termination of Funding

OJJDP may suspend, in whole or in part, or terminate funding for a grantee for failure to conform to the requirements or statutory objectives of the Act. Prior to suspension of a grant, OJJDP will provide reasonable notice to the grantee of its intent to suspend the grant and will attempt informally to resolve the problem resulting in the intended suspension. Hearing and appeal procedures for termination actions are set forth in the Department of Justice regulation at 28 CFR part 18.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 91-21945 Filed 9-11-91; 8:45 am]

BILLING CODE 4410-18-M

federal register

Thursday
September 12, 1991

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Explosives at Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Stay of effective date of final rule and partial administrative stay of final rule; revision and republishing of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) published in the **Federal Register** a final rule concerning safety standards for explosives at metal and nonmetal mines on January 18, 1991 (56 FR 2070). After a series of stayes that extended the effective date, the final rule was to become effective on September 13, 1991 (56 FR 3201). Due to the Agency actions described in this and in prior notices, the final rule now has an effective date of November 1, 1991.

This document also gives notice of a one-year, administrative stay of the following provisions of the final rule at 30 CFR parts 56 and 57: §§ 56.6202(a)(1) and 57.6202(a)(1) on vehicles, §§ 56.6304(b) and 57.6304(b) on primer protection, §§ 56.6306 (a) and (c) through (g) and 57.6306 (a) and (c) through (g) on loading and blasting, §§ 56.6902(b) and 57.6902(b) on excessive temperatures, and §§ 56.6903 and 57.6903 on burning explosive material. Included within this one-year administrative stay are those provisions that were stayed indefinitely by **Federal Register** notice on April 10, 1991 (56 FR 14470). These indefinitely stayed provisions, now subject to the one-year stay, are §§ 56.6000 and 57.6000 on the definition of "blast site," the first sentence in §§ 56.6130(b) and 57.6130(b) on location of explosive material storage facilities, §§ 56.6131(a)(1) and 57.6131(a)(1) on requirements for storage of packaged blasting agents, §§ 56.6306(b) and 57.6306(b) on restrictions on activity within the blast site, §§ 56.6501(a) and 57.6501(a) on requirements of double trunklines or loop systems for nonelectric initiating systems, and Appendix I to subpart E—MSHA Tables of Distances.

This one-year administrative stay is effective until October 1, 1992. MSHA grants this stay in order to conduct supplemental rulemaking restricted to those issues raised in provisions stayed by this notice and by the notice of April 10, 1991 (56 FR 14470).

In addition to the stay of the effective date and the one-year partial administrative stay, MSHA is revising subpart E of 30 CFR parts 56 and 57 to reinstate several current regulations that otherwise would be superseded upon the effective date of the final rule. These reinstated regulations will be effective during the period of the one-year stay unless terminated before October 1, 1992, by **Federal Register** notice.

For the reader's convenience, MSHA has republished the full text of the revised final rule below. MSHA has renumbered the reinstated regulations so that the final rule as republished contains all provisions which will take effect on November 1, 1991, as well as those which are subject to the administrative stay.

EFFECTIVE DATE: The final rule, published on January 18, 1991 (56 FR 2070), as revised by this notice, will become effective November 1, 1991, except for the provisions stayed by this notice. The following provisions are stayed until October 1, 1992: 30 CFR 56.6000 definition of "blast site", 56.6130(b) first sentence, 56.6131(a)(1), 56.6202(a)(1), 56.6304(b), 56.6306, 56.6501(a), 56.6902(b), 56.6903, 57.6000 definition of "blast site", 57.6130(b) first sentence, 57.6131(a)(1), 57.6202(a)(1), 57.6304(b), 57.6306, 57.6501(a), 57.6902(b), 57.6903, and Appendix I to subpart E—MSHA Tables of Distances of 30 CFR parts 56 and 57.

Unless terminated earlier by **Federal Register** notice, the following reinstated and renumbered sections will expire and be replaced as of October 1, 1992: §§ 56.6140, 56.6220, 56.6320, 56.6330, 56.6331, 57.6140, 57.6220, 57.6320, 57.6330, 57.6331, 57.6375, and 57.6382.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule in the **Federal Register** (56 FR 2070) revising its safety standards for explosives at metal and nonmetal mines. These standards were scheduled to take effect on March 19, 1991. However, on March 7, 1991, after further review of information regarding several provisions of the final rule, MSHA extended the effective date until May 20, 1991 (56 FR 9626). On April 10, 1991, MSHA indefinitely stayed the effective date of several provisions of the final rule and reopened the rulemaking record (56 FR 14470). On May 17, 1991, based on comments received from mine operators and explosives manufacturers and on a request by the Institute of Makers of Explosives (IME) for a reconsideration of the rule, the Agency stayed the effective date of the final rule until July 16, 1991 (56 FR 22825). On July 15, 1991, the Agency extended the stay of the effective date of the final rule until September 13, 1991 (56 FR 32091). The Agency is further extending the stay of the effective date of the final rule until November 1, 1991, in order to give the affected mining community adequate notice of the reinstatement of several current provisions that will take effect as part of the final rule until terminated by **Federal Register** notice on or before October 1, 1992.

Since publication of the revised standards on January 18, 1991, MSHA has received a number of requests from rulemaking participants for the Agency to reconsider information within the rulemaking record. Specifically, some commenters pointed out that certain provisions of the final rule needed further public input and review by the Agency. In response, MSHA stayed the effective date of the rule in order to examine the rulemaking record. As a result, MSHA believes that further rulemaking is necessary on the stayed provisions, and a new proposed rule addressing these issues will be issued by the Agency in the near future.

Regarding the rulemaking record, MSHA will consider all comments on the stayed provisions currently within the rulemaking record, as well as any other comments on the new proposed rule. All submissions to MSHA concerning the explosives rulemaking will be placed in the record and made available for public review and comment.

During the period of the stay, the following existing regulations in subpart E of parts 56 and 57 have been reinstated and renumbered accordingly: §§ 56.6020(a) and 57.6020(a) renumbered as §§ 56.6140 and 57.6140 on location of magazines; §§ 56.6046 and 57.6046 renumbered as §§ 56.6220 and 57.6220 on maintenance and operation of transport vehicles; §§ 56.6094 and 57.6094 renumbered as §§ 56.6320 and 57.6320 on blasthole charging; §§ 56.6160 and 57.6160 renumbered as §§ 56.6330 and 57.6330 on protection of personnel at blast site; §§ 56.6161 and 57.6161 renumbered as §§ 56.6331 and 57.6331 on burning charges; § 57.6175 renumbered as § 57.6375 on loading and blast site restrictions; and § 57.6182 renumbered as § 57.6382 on blasting in shafts or winzes.

DISTRIBUTION TABLE

Current section	Renumbered section
56.6020(a)	56.6140
56.6046	56.6220
56.6094	56.6320
56.6160	56.6330
56.6161	56.6331
57.6020(a)	57.6140
57.6046	57.6220
57.6094	57.6320
57.6160	57.6330
57.6161	57.6331
57.6175	57.6375
57.6182	57.6382

To serve the interests of the mining community, MSHA has republished the final rule provisions that will go into effect on November 1, 1991. MSHA includes in the republication those provisions administratively stayed as well as those renumbered current regulations that the agency has reinstated during the one-year stay period.

This document is issued under 30 U.S.C. 811.

Dated: September 6, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

PART 56—[AMENDED]

Subparts E and F of part 56, subchapter N, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

§ 56.6000 [Stayed in part]

1. Stay the effective date of definition of "blast site" in revised § 56.6000 until October 1, 1992.

§ 56.6130 [Stayed in part]

2. Stay the effective date of the first sentence in paragraph (b) of revised § 56.6130 until October 1, 1992.

§ 56.6131 [Stayed in part]

3. Stay the effective date of paragraph (a)(1) of revised § 56.6131 until October 1, 1992.

§ 56.6202 [Stayed in part]

4. Stay the effective date of paragraph (a)(1) of revised § 56.6202 until October 1, 1992.

§ 56.6304 [Stayed in part]

5. Stay the effective date of paragraph (b) of revised § 56.6304 until October 1, 1992.

§ 56.6306 [Stayed]

6. Stay the effective date of revised § 56.6306 until October 1 1992.

§ 56.6501 [Stayed in part]

7. Stay the effective date of paragraph (a) of revised § 56.6501 until October 1, 1992.

§ 56.6902 [Stayed in part]

8. Stay the effective date of paragraph (b) of revised § 56.6902 until October 1, 1992.

§ 56.6903 [Stayed]

9. Stay the effective date of revised § 56.6903 until October 1, 1992.

Appendix to Subpart E [Stayed]

10. Stay the effective date of revised appendix I to subpart E until October 1, 1992.

11. As of November 1, 1991 subpart E of part 56 is revised to read as set forth below.

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

* * * * *

Subpart E—Explosives

Sec.

Authority: 30 U.S.C. 811, 956, and 961.

Subpart E—Explosives

§ 56.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blastholes and 50 feet in all directions from loaded holes. The 50-foot requirement also applies in all directions along the full depth of the hole.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114a(a). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instantaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood, ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel, and ¼ inch thick plywood, bonded together in that order. Other combinations of material may be used, such as plywood, wood, or gypsum wallboard as insulators, and steel or wood as structural elements, provided that the partition is equivalent to a laminated partition for both insulation and structural purposes as determined by appropriate testing. The Institute of Makers of Explosives (IME) 22 container or compartment, described in IME Safety Library Publication 22 (Jan. 1985), meets the criteria of a laminated partition. This document is available at any MSHA Metal and Nonmetal Safety and Health District Office.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting circuits between the blast site and the switch used to connect a power source to the blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of the definition of "blast site" in § 56.6000 is stayed until October 1, 1992.

Storage

§ 56.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 56.6101 Areas around explosive material storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions, except that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 56.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and detonators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

§ 56.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended. Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of the first sentence in § 56.6130(b) is stayed until October 1, 1992.

§ 56.6131 Location of explosive material storage facilities.

(a) Storage facilities for any explosive material shall be—

(1) Located in accordance with Appendix I to subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage dams or electric substations; and

(2) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6131(a)(1) is stayed until October 1, 1992.

§ 56.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made of nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 56.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in separate chests from explosives or blasting agents, except if separated by 4-inches of hardwood, laminated partition, or equivalent.

§ 56.6140 Magazine location.

Magazines shall be located in accordance with the current American Table of Distances for storage of explosives.

Note: At 56 FR ____, Sept. 12, 1991, § 56.6140 is effective until October 1, 1992, unless terminated earlier by **Federal Register** notice.

Transportation

§ 56.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 56.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or the equivalent shall be fastened to the vehicle or conveyance.

(b) Detonators in quantities of 1000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or equivalent shall be fastened to the vehicle or conveyance.

§ 56.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Posted with warning signs that indicate the contents and are visible from each approach;

(6) Occupied only by persons necessary for handling the explosive material;

(7) Attended or the cargo compartment locked, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

Note: At 56 FR ____, Sept. 12, 1991, § 56.6202(a)(1) is stayed until October 1, 1992.

§ 56.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 56.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances, the hoist operator shall be notified.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 56.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

§ 56.6220 Maintenance and operation of transport vehicles.

Vehicles containing explosives or detonators shall be maintained in good condition and shall be operated at a safe speed and in accordance with all safe operating practices.

Note: At 56 FR ____, Sept. 12, 1991, § 56.6220 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Use

§ 56.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 56.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and wherever possible, cleared of obstructions.

§ 56.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins.

(b) Explosive material shall be protected from impact and temperatures in excess of 150°F when taken to the blast site.

§ 56.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 56.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6304(b) is stayed until October 1, 1992.

§ 56.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 56.6306 Loading and blasting.

(a) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or otherwise create a hazard.

(b) Once loading begins, the only activity permitted within the blast site shall be activity directly related to the blasting operation, and occasional haulage activity near the base of the highwall being loaded where no other haulage access exists.

(c) Loading shall be continuous except for emergency situations, shift changes, and up to two consecutive idle shifts.

(d) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(e) Upon completion of loading and connecting of circuits, firing of blasts shall occur without undue delay.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) No work shall resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person having abilities and experience that fully qualify the person to perform the duty assigned.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6306 is stayed until October 1, 1992.

§ 56.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 56.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 56.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125°F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100°F may be used at ambient air temperatures below 45°F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 56.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 56.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 56.6312 Secondary blastings.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 56.6313 Blast site security.

Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, barricaded and posted, or flagged against unauthorized entry.

§ 56.6320 Blasthole charging.

Holes to be blasted shall be charged as near to blasting time as practical and such holes shall be blasted as soon as possible after charging has been completed. In no case shall the time elapsing between the completion of charging to the time of blasting exceed 72 hours unless prior approval has been obtained from MSHA.

Note At 56 FR ____, Sept. 12, 1991, § 56.6320 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

§ 56.6330 Protection of personnel at blast site.

Ample warning shall be given before blasts are fired. All persons shall be cleared and removed from the blasting area unless suitable blasting shelters are provided to protect persons endangered by concussion or flyrock from blasting.

Note: At 56 FR ____, Sept. 12, 1991, § 56.6330 is effective until October 1, 1992.

unless terminated earlier by Federal Register notice.

§ 56.6331 Burning charges.

If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location and no one shall return to the hole until the danger has passed, but in no case within 1 hour.

Note: At 56 FR ____, Sept. 12, 1991, § 56.6331 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Electric Blasting

§ 56.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 56.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 56.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 amperes through a 1-ohm resistor as measured at the blast site.

§ 56.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 56.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 56.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 56.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 56.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test each of the following:

(a) Continuity of each electric detonator in the blasthole prior to stemming or connection to the blasting line.

(b) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(c) Continuity of blasting lines prior to the connection of electric detonator series.

(d) Total blasting circuit resistance prior to connection to the power source.

Nonelectric Blasting

§ 56.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 56.6501 Nonelectric initiation systems.

(a) When blasting with any nonelectric initiation system where continuity cannot be tested, double trunklines or loop systems shall be used, except—

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When blasting one or two rows using shock tube.

(b) When the nonelectric initiation system uses shock tube—

(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.

(c) When the nonelectric initiation system uses detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) Connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area when surface delay detonators are used; and

(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.

(d) When the nonelectric initiation system uses gas tube, continuity of the circuit shall be tested prior to blasting.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6501(a) is stayed until October 1, 1992.

§ 56.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table.

TABLE E-1.—SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 minutes.[1]
2-5	2 minutes 40 seconds.
6-10	3 minutes 20 seconds.
11 to 15	5 minutes.

[1] For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric initiation systems, igniter cord and connectors, or other nonelectric initiation systems shall be used.

Extraneous Electricity

§ 56.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 56.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 56.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1000 ohms of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and

(e) plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 56.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 56.6604 Precautions during storms.

During the approach and progress of an electrical storm, blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

§ 56.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment Tools

§ 56.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 56.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance

§ 56.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility—

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 56.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 56.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½ inch diameter opening to allow for sufficient ventilation.

§ 56.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements

§ 56.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 56.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times when—

(i) Within 50 feet of any magazine or open flame,

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating, or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring.

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 56.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.

(b) Special precautions shall be used when blasting sulfide ores that react with explosive material or stemming in blastholes.

Note: At 56 FR____, Sept. 12, 1991, the effective date of § 56.6902(b) is stayed until October 1, 1992.

§ 56.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.903 is stayed until October 1, 1992.

§ 56.6904 Smoke and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

Appendix I to Subpart E—MSHA Tables of Distances

TABLE 1—SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
5	70	140	6	12
10	90	180	8	16
20	110	220	10	20
30	125	250	11	22
40	140	280	12	24
50	150	300	14	28
75	170	340	15	30
100	190	380	16	32
125	200	400	18	36
150	215	430	19	38
200	235	470	21	42
250	255	510	23	46
300	270	540	24	48
400	295	590	27	54
500	320	640	29	58
600	340	680	31	62
700	355	710	32	64
800	375	750	33	66
900	390	780	35	70
1,000	400	800	36	72
1,200	425	850	39	78
1,400	450	900	41	82
1,600	470	940	43	86
1,800	490	980	44	88
2,000	505	1,010	45	90
2,500	545	1,090	49	98
3,000	580	1,160	52	104
4,000	635	1,270	58	116
5,000	685	1,370	61	122
6,000	730	1,460	65	130
7,000	770	1,540	68	136
8,000	800	1,600	72	144
9,000	835	1,670	75	150
10,000	865	1,730	78	156
12,000	875	1,750	82	164
14,000	885	1,770	87	174
16,000	900	1,800	90	180
18,000	940	1,880	94	188
20,000	975	1,950	98	196
25,000	1,055	2,000	105	210
30,000	1,130	2,000	112	224
35,000	1,205	2,000	119	238
40,000	1,275	2,000	124	248
45,000	1,340	2,000	129	258
50,000	1,400	2,000	135	270
55,000	1,460	2,000	140	280
60,000	1,515	2,000	145	290
65,000	1,565	2,000	150	300
70,000	1,610	2,000	155	310
75,000	1,655	2,000	160	320
80,000	1,695	2,000	165	330
85,000	1,730	2,000	170	340
90,000	1,760	2,000	175	350
95,000	1,790	2,000	180	360

TABLE 1—SURFACE STORAGE OF EXPLOSIVE MATERIAL—Continued

Quantity of explosive material (pounds) Not over	Minimum separation distances (feet) From mine buildings, dams and electric substations		Between magazines	
	Barricaded	Unbarricaded	Barricaded	Unbarricaded
100,000	1,815	2,000	185	370
110,000	1,835	2,000	195	390
120,000	1,855	2,000	205	410
130,000	1,875	2,000	215	430
140,000	1,890	2,000	225	450
150,000	1,900	2,000	235	470
160,000	1,935	2,000	245	490
170,000	1,965	2,000	255	510
180,000	1,990	2,000	265	530
190,000	2,010	2,010	275	550
200,000	2,030	2,030	285	570
210,000	2,055	2,055	295	590
230,000	2,100	2,100	315	630
250,000	2,155	2,155	335	670
275,000	2,215	2,215	360	720
300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is screened effectively by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth with a minimum thickness of three feet.

TABLE 2—MSHA TABLE OF SEPARATION DISTANCES

Quantity of ammonium nitrate of blasting agents (pounds) Not over	Storage facilities—minimum separation distances when barricaded [1] (feet) Ammonium nitrate	Blasting agents	Minimum thickness of artificial barricades [2] (inches)
100	3	11	12
300	4	14	12
600	5	18	12
1,000	6	22	12
1,600	7	25	12
2,000	8	29	12
3,000	9	32	15
4,000	10	36	15
6,000	11	40	15
8,000	12	43	20
10,000	13	47	20
12,000	14	50	20
16,000	15	54	25
20,000	16	58	25
25,000	18	65	25
30,000	19	68	30
35,000	20	72	30
40,000	21	76	30
45,000	22	79	35
50,000	23	83	35
55,000	24	86	35
60,000	25	90	35
70,000	26	94	40
80,000	28	101	40
90,000	30	108	40
100,000	32	115	40
120,000	34	122	50
140,000	37	133	50
160,000	40	144	50
180,000	44	158	50
200,000	48	173	50
220,000	52	187	60
250,000	56	202	60
275,000	60	216	60
300,000	64	230	60

[1] When the ammonium nitrate or blasting agents are not barricaded, the distances shown in the table must be multiplied by six.

[2] For purposes of this table "barricaded" means that the storage facility is screened effectually by a natural barricade or an artificial barricade consisting of amount or revetted wall or earth with the prescribed minimum thickness.

Note: At 56 FR ____, Sept. 12, 1991, appendix I to subpart E of part 56 is stayed until October 1, 1992.

12. Sections 56.7055 and 56.7056 of subpart F which were added on January 18, 1991 (56 FR 2096), are stayed until November 1, 1991, and revised as of that date to read as follows:

Subpart F—Drilling and Rotary Jet Piercing

§ 56.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives blasting agents, or detonators.

§ 56.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

PART 57—[AMENDED]

Subparts E and F of part 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

§ 57.6000 [Stayed in part]

1. Stay the effective date of definition of "blast site" in revised § 57.6000 until October 1, 1992.

§ 57.6130 [Stayed in part]

2. Stay the effective date of the first sentence in paragraph (b) of revised § 57.6130 until October 1, 1992.

§ 57.6131 [Stayed in part]

3. Stay the effective date of paragraph (a)(1) of revised § 57.6131 until October 1, 1992.

§ 57.6202 [Stayed in part]

4. Stay the effective date of paragraph (a)(1) of revised § 57.6202 until October 1, 1992.

§ 57.6304 [Stayed in part]

5. Stay the effective date of paragraph (b) of revised § 57.6304 until October 1, 1992.

§ 57.6306 [Stayed in part]

6. Stay the effective date of revised § 57.6306 until October 1, 1992.

§ 57.6501 [Stayed in part]

7. Stay the effective date of paragraph (a) of revised § 57.6501 until October 1, 1992.

§ 57.6902 [Stayed in part]

8. Stay the effective date of paragraph (b) of revised § 57.6902 until October 1, 1992.

§ 57.6903 [Stayed]

9. Stay the effective date of revised § 57.6903 until October 1, 1992.

Appendix I to Subpart E [Stayed]

10. Stay the effective date of revised Appendix I to subpart E until October 1, 1992.

11. As of November 1, 1991 subpart E is revised to read as set forth below.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

* * * * *

Subpart E—Explosives

Authority: 30 U.S.C. 811, 956, and 961.

Subpart E—Explosives

§ 57.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access. In addition, areas containing explosive material at underground areas of a mine can be considered attended when all access to the underground areas of the mine is secured from unauthorized entry. Vertical shafts shall be considered secure. Inclined shafts or adits shall be considered secure when locked at the surface.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blastholes and 50 feet in all directions from loaded holes. The 50-foot requirement also applies in all directions along the full depth of the hole. In underground mines, 15 feet of solid rib or pillar can be substituted for the 50-foot distance.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114(a). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instantaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood, ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel, and ¼ inch thick plywood, bonded together in that order. Other combinations of materials may be used, such as plywood, wood or gypsum wallboard as insulators, and steel or wood as structural elements, provided

that the partition is equivalent to a laminated partition for both insulation and structural purposes as determined by appropriate testing. The Institute of Makers of Explosives (IME) 22 container or compartment, described in IME Safety Library Publication 22 (Jan. 1985), meets the criteria of a laminated partition. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting circuits between the blast site and the switch used to connect a power source to a blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of the definition of "blast site" in § 57.6000 is stayed until October 1, 1992.

Storage—Surface and Underground

§ 57.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 57.6101 Areas around explosive material storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions, except that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 57.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and detonators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

Storage—Surface Only

§ 57.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended. Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of the first sentence in § 57.6130(b) is stayed until October 1, 1992.

§ 57.6131 Location of explosive material storage facilities.

Storage facilities for any explosive material shall be—

(1) Located in accordance with Appendix I for subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage mine openings, mine ventilation fans, dams, or electric substations; and

(2) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 57.6131(a)(1) is stayed until October 1, 1992.

§ 57.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made of nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 57.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in separate chests from explosives or blasting agents, except if separated by 4 inches of hardwood, laminated partition, or equivalent.

§ 57.6140 Magazine location.

Magazines shall be located in accordance with the current American Table of Distances for storage of explosives.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6140 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Storage—Underground Only

§ 57.6160 Main facilities.

(a) Main facilities used to store explosive material underground shall be located—

(1) In stable or supported ground;

(2) So that a fire or explosion in the storage facilities will not prevent escape from the mine, or cause detonation of the contents of another storage facility;

(3) Out of the line of blasts, and protected from vehicular traffic, except that accessing the facility;

(4) At least 200 feet from work places or shafts;

(5) At least 50 feet from electric substations;

(6) A safe distance from trolley wires; and

(7) At least 25 feet from detonator storage facilities.

(b) Main facilities used to store explosive material underground shall be—

(1) Posted with warning signs that indicate the contents and are visible from any approach;

(2) Used exclusively for the storage of explosive material and necessary equipment associated with explosive material storage and delivery:

(i) Portions of the facility used for the storage of explosives shall only contain nonsparking material or equipment.

(ii) The blasting agent portion of the facility may be used for the storage of other necessary equipment.

(3) Kept clean, suitably dry, and orderly;

(4) Provided with unobstructed ventilation openings;

(5) Kept securely locked unless all access to the mine is either locked or attended; and

(6) Unlighted or lighted only with devices that do not create a fire or explosion hazard and which are specifically designed for use in magazines.

(c) Electrical switches and outlets shall be located outside the facility.

§ 57.6161 Auxiliary facilities.

(a) Auxiliary facilities used to store explosive material near work places shall be wooden, box-type containers equipped with covers or doors, or facilities constructed or mined-out to provide equivalent impact resistance and confinement.

(b) The auxiliary facilities shall be—

(1) Constructed of nonsparking material on the inside when used for the storage of explosives;

(2) Kept clean, suitably dry, and orderly;

(3) Kept in repair;

(4) Located out of the line of blasts so they will not be subjected to damaging shock or flyrock;

(5) Identified with warning signs or coded to indicate the contents with markings visible from any approach;

(6) Located at least 15 feet from all haulageways and electrical equipment, or placed entirely within a mined-out recess in the rib used exclusively for explosive material;

(7) Filled with no more than a one-week supply of explosive material;

(8) Separated by at least 25 feet from other facilities used to store detonators; and

(9) Kept securely locked unless all access to the mine is either locked or attended.

Transportation—Surface and Underground

§ 57.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 57.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or equivalent shall be fastened to the vehicle or conveyance.

(b) Detonators in quantities of 1000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or the equivalent shall be fastened to the vehicle or conveyance.

§ 57.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well-maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Posted with warning signs that indicate the contents and are visible from each approach;

(6) Occupied only by persons necessary for handling the explosive material;

(7) Attended or the cargo compartment locked at surface areas of underground mines, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6202(a)(1) is stayed until October 1, 1992.

§ 57.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley

locomotive, covered, electrically insulated cars shall be used.

§ 57.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances—

(1) The hoist operator shall be notified; and

(2) Hoisting in adjacent shaft compartments, except for empty conveyances or counterweights, shall be stopped until transportation of the explosive material is completed.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 57.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

§ 57.6220 Maintenance and operation of transport vehicles.

Vehicles containing explosives or detonators shall be maintained in good condition and shall be operated at a safe speed and in accordance with all safe operating practices.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6220 is effective unit October 1, 1992, unless terminated earlier by Federal Register notice.

Use—Surface and Underground

§ 57.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 57.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and wherever possible, cleared of obstructions.

§ 57.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins.

(b) Explosive material shall be protected from impact and temperatures in excess of 150 °F when taken to the blast site.

§ 57.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 57.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6304(b) is stayed until October 1, 1992.

§ 57.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 57.6306 Loading and blasting.

(a) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or otherwise create a hazard.

(b) Once loading begins, the only activity permitted within the blast site shall be activity directly related to the blasting operation, and occasional haulage activity near the base of the highwall being loaded where no other haulage access exists.

(c) Loading shall be continuous except for emergency situations, shift changes, and up to two consecutive idle shifts.

(d) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(e) Upon completion of loading and connecting of circuits, firing of blasts shall occur without undue delay.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) No work shall resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person having abilities and experience that fully qualify the person to perform the duty assigned.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 56.6306 is stayed until October 1, 1992.

§ 57.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 57.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 57.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 °F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100 °F may be used at ambient air temperatures below 45 °F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 57.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 57.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 57.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 57.6313 Blast site security.

Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, barricaded and posted, or flagged against unauthorized entry.

§ 57.6320 Blasthole charging.

Holes to be blasted shall be charged as near to blasting time as practical and such holes shall be blasted as soon as possible after charging has been completed. In no case shall the time elapsing between the completion of charging to the time of blasting exceed 72 hours unless prior approval has been obtained from MSHA.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6320 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Use—Surface Only

§ 57.6330 Protection of personnel at blast site.

Ample warning shall be given before blasts are fired. All persons shall be cleared and removed from the blasting area unless suitable blasting shelters are provided to protect persons endangered by concussion or flyrock from blasting.

Note: At 56 FR ____, Sept. __, 1991, § 56.6330 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

§ 57.6331 Burning charges.

If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location and no one shall return to the hole until the danger has passed, but in no case within 1 hour.

Note: At 56 FR ____, Sept. __, 1991, § 57.6331 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Use—Underground Only

§ 57.6375 Loading and blast site restrictions.

Ample warning shall be given before the blasts are fired. All persons shall be cleared and removed from areas endangered by the blast. Clear access to exits shall be provided for personnel firing the rounds.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6375 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

§ 57.6382 Blasting in shafts or winzes.

Blasts in shafts or winzes shall be initiated from a safe location outside the shaft or winze.

Note: At 56 FR ____, Sept. 12, 1991, § 57.6382 is effective until October 1, 1992, unless terminated earlier by Federal Register notice.

Electric Blasting—Surface and Underground

§ 57.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 57.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 57.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 amperes through a 1–ohm resistor as measured at the blast site.

§ 57.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 57.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 57.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 57.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 57.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test the following:

(a) In surface operations—

(1) Continuity of each electric detonator in the blasthole prior to stemming and connection to the blasting line;

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;

(3) Continuity of blasting lines prior to the connection of electric detonator series; and

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations—

(1) Continuity of each electric detonator series; and

(2) Continuity of blasting lines prior to the connection of electric detonators.

Nonelectric Blasting—Surface and Underground

§ 57.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 57.6501 Nonelectric initiation systems.

(a) When blasting with any nonelectric initiation system where continuity cannot be tested, double trunklines or loop systems shall be used, except—

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When blasting one or two rows using shock tube.

(b) When the nonelectric initiation system uses shock tube—

(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.

(c) When the nonelectric initiation system uses detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) Connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area when surface delay detonators are used; and

(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.

(d) When nonelectric initiation systems use gas tube, continuity of the circuit shall be tested prior to blasting.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 57.6501(a) is stayed until October 1, 1992.

§ 57.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table.

TABLE E-1.—SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 minutes.*
2-5	2 minutes 40 seconds.
6-10	3 minutes 20 seconds.
11 to 15	5 minutes.

* For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric initiation systems, igniter cord and connectors, or other nonelectric initiation systems shall be used.

Extraneous Electricity—Surface and Underground

§ 57.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 57.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 57.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1000 ohms of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 57.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 57.6604 Precautions during storms.

During the approach and progress of an electrical storm—

(a) Surface blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

(b) Underground electrical blasting operations that are capable of being initiated by lightning shall be suspended and all persons withdrawn from the blast area or to a safe location.

§ 57.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment/Tools—Surface and Underground

§ 57.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 57.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance—Surface and Underground

§ 57.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility—

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 57.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 57.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½ inch diameter opening to allow for sufficient ventilation.

§ 57.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements—Surface and Underground

§ 57.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 57.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times when—

(i) Within 50 feet of any magazine or open flame,

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating, or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring.

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 57.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.

(b) Special precautions shall be used when blasting sulfide ores that react with explosive material or stemming in blastholes.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 57.6902(b) is stayed until October 1, 1992.

§ 57.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

Note: At 56 FR ____, Sept. 12, 1991, the effective date of § 57.6903 is stayed until October 1, 1992.

§ 57.6904 Smoking and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

General Requirements—Underground Only

§ 57.6960 Mixing of explosive material.

(a) The mixing of ingredients to produce explosive material shall not be conducted underground unless prior approval of the MSHA district manager is obtained. In granting or withholding approval, the district manager shall consider the potential hazards created by—

(1) The location of the stored material and the storage practices used;

(2) The transportation and use of the explosive material;

(3) The nature of the explosive material, including its sensitivity;

(4) Any other factor deemed relevant to the safety of miners potentially exposed to the hazards associated with the mixing of the bulk explosive material underground.

(b) Storage facilities for the ingredients to be mixed shall provide drainage away from the facilities for leaks and spills.

Appendix I to Subpart E—MSHA Tables of Distances

TABLE 1.—SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
5	70	140	6	12
10	90	180	8	16
20	110	220	10	20
30	125	250	11	22
40	140	280	12	24
50	150	300	14	28
75	170	340	15	30
100	190	380	16	32
125	200	400	18	36
150	215	430	19	38
200	235	470	21	42
250	255	510	23	46

TABLE 1.—SURFACE STORAGE OF EXPLOSIVE MATERIAL—Continued

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
300	270	540	24	48
400	295	590	27	54
500	320	640	29	58
600	340	680	31	62
700	355	710	32	64
800	375	750	33	66
900	390	780	35	70
1,000	400	800	36	72
1,200	425	850	39	78
1,400	450	900	41	82
1,600	470	940	43	86
1,800	490	980	44	88
2,000	505	1,010	45	90
2,500	545	1,090	49	98
3,000	580	1,160	52	104
4,000	635	1,270	58	116
5,000	685	1,370	61	122
6,000	730	1,460	65	130
7,000	770	1,540	68	136
8,000	800	1,600	72	144
9,000	835	1,670	75	150
10,000	865	1,730	78	156
12,000	875	1,750	82	164
14,000	885	1,770	87	174
16,000	900	1,800	90	180
18,000	940	1,880	94	188
20,000	975	1,950	98	196
25,000	1,055	2,000	105	210
30,000	1,130	2,000	112	224
35,000	1,205	2,000	119	238
40,000	1,275	2,000	124	248
45,000	1,340	2,000	129	258
50,000	1,400	2,000	135	270
55,000	1,460	2,000	140	280
60,000	1,515	2,000	145	290
65,000	1,565	2,000	150	300
70,000	1,610	2,000	155	310
75,000	1,655	2,000	160	320
80,000	1,695	2,000	165	330
85,000	1,730	2,000	170	340
90,000	1,760	2,000	175	350
95,000	1,790	2,000	180	360
100,000	1,815	2,000	185	370
110,000	1,835	2,000	195	390
120,000	1,855	2,000	205	410
130,000	1,875	2,000	215	430
140,000	1,890	2,000	225	450
150,000	1,900	2,000	235	470
160,000	1,935	2,000	245	490
170,000	1,965	2,000	255	510
180,000	1,990	2,000	265	530
190,000	2,010	2,010	275	550
200,000	2,030	2,030	285	570
210,000	2,055	2,055	295	590
230,000	2,100	2,100	315	630
250,000	2,155	2,155	335	670
275,000	2,215	2,215	360	720
300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is screened effectively by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth with a minimum thickness of three feet.

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES

Quantity of ammonium nitrate of blasting agents (pounds)	Storage facilities—minimum separation distances when barricaded * (feet)		Minimum thickness of artificial barricades ** (inches)
Not over	Ammonium nitrate	Blasting agents	
100	3	11	12
300	4	14	12
600	5	18	12
1,000	6	22	12
1,600	7	25	12
2,000	8	29	12
3,000	9	32	15

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES—Continued

Quantity of ammonium nitrate of blasting agents (pounds)	Storage facilities—minimum separation distances when barricaded * (feet)		Minimum thickness of artificial barricades ** (inches)
Not over	Ammonium nitrate	Blasting agents	
4,000	10	36	15
6,000	11	40	15
8,000	12	43	20
10,000	13	47	20
12,000	14	50	20
16,000	15	54	25
20,000	16	58	25
25,000	18	65	25
30,000	19	68	30
35,000	20	72	30
40,000	21	76	30
45,000	22	79	35
50,000	23	83	35
55,000	24	86	35
60,000	25	90	35
70,000	26	94	40
80,000	28	101	40
90,000	30	108	40
100,000	32	115	40
120,000	34	122	50
140,000	37	133	50
160,000	40	144	50
180,000	44	158	50
200,000	48	173	50
220,000	52	187	60
250,000	56	202	60
275,000	60	216	60
300,000	64	230	60

* When the ammonium nitrate or blasting agents are not barricaded, the distances shown in the table must be multiplied by six.
** For purposes of this table, "barricaded" means that the storage facility is screened effectually by a natural barricade or an artificial barricade consisting of amount of revetted wall or earth with the prescribed minimum thickness.

Note: At 56 FR ____, Sept. 12, 1991, appendix I to subpart E of part 57 is stayed until October 1, 1992.

12. Sections 57.7055 and 57.7056 of subpart F which were added on January 18, 1991 (56 FR 2104), are stayed until November 1, 1991, and revised as of that date to read as follows:

Subpart F—Drilling and Rotary Jet Piercing

§ 56.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives, blasting agents, or detonators.

§ 57.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

[FR Doc. 91-21863 Filed 9-11-91; 8:45 am]
BILLING CODE 4510-43-M

federal register

Thursday
September 12, 1991

Part V

Department of Defense

48 CFR Parts 225, 231, and 242
Department of Defense Federal Acquisition Regulation Supplement; Independent Research and Development Costs; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 231, and 242

Department of Defense Federal Acquisition Regulation Supplement; Independent Research and Development Costs

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised DoD FAR Supplement parts 225, 231, and 242 to implement section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510). This final rule incorporates the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD" and makes other related changes. Additional requirements of 10 U.S.C. 2372 have been proposed for implementation in the Federal Acquisition Regulation and will be published separately.

Note: This rule amends the 1988 edition of the DFARS, not the 1991 edition which was published July 31, 1991 (56 FR 36280).

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266. Please cite DAR Case 90–313D.

SUPPLEMENTARY INFORMATION:

A. Background

Background information on the proposed rule was published in the **Federal Register** on March 14, 1991 (56 FR 10854). Several editorial and other minor changes were made after considering public comments received in response to the proposed rule. In 231.205–18(c)(1)(iii)(S–71)(*1*), the word "activities" was changed to "projects." DFARS 242.1005(a) was rewritten to clarify the responsibility of the DoD IR&D Technical Evaluation Group in providing contractors with appropriate guidance for submission of technical information to support IR&D proposals. In 242.1005(c) and in 242.1006(a)(5) and (b), the citation "231.205–18(c)(1)(iii)(A)" was changed to "231.205–18(c)(1)(iii)(S–70)(*2*)."

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. Therefore, the Regulatory Flexibility Act does not apply and a Regulatory Flexibility Analysis has not been performed. Comments on the applicability of the Regulatory Flexibility Act were invited but none were received.

C. Paperwork Reduction Act

The final rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On March 14, 1991, a proposed rule was published in the **Federal Register** (56 FR 10854). Comments received from five organizations were considered by the Council; four minor changes were made in the development of the final rule.

List of Subjects in 48 CFR Parts 225, 231, and 242

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225, 231, and 242 are amended as follows:

1. The authority citation for 48 CFR parts 225, 231, and 242 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is amended by revising paragraphs (c)(2) and (3) to read as follows:

225.7304 Pricing acquisitions for foreign military sales.

* * * * *

(c) *Cost of Doing Business With a Foreign Government or an International Organization.* * * *

* * * * *

(2) Cost that are allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraph (c)(3) of this section.

(3) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs incorporated in FAR part 31 shall not be applicable to contracts for foreign military sales. IR&D/B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205–18 is revised as follows:

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(iii)(S–70)(*1*) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205–18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of:

(*i*) Such contracts' allocable share of incurred IR&D/B&P costs;

(*ii*) Such contracts' allocable share of the total IR&D/B&P ceiling; or

(*iii*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(*2*) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that:

(*i*) Strengthen the defense industrial and technology base of the United States;

(*ii*) Enhance the industrial competitiveness of the United States;

(*iii*) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(*iv*) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(*v*) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(S–71) The contracting officer will:

(*1*) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(*2*) Provide the results of the determination to the contractor.

(S–72) See 225.7304 for additional allowability requirements affecting foreign military sales contracts.

PART 242—CONTRACT ADMINISTRATION

4. Section 242.1005 is revised to read as follows:

242.1005 Lead negotiating agency responsibilities.

(a) The DoD IR&D Technical Evaluation Group is responsible for providing contractors the appropriate guidance for submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205–18(c)(1)(iii)(S–70)(*2*) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

5. Section 242.1006 is revised to read as follows:

242.1006 Conducting negotiations.

(a)(5) Ensure that the 231.205–18(c)(1)(iii)(S–70)(*2*) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD is met.

(b) To implement 10 U.S.C. 2372(c), contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205–18(c)(1)(iii)(S–70)(*2*).

6. Section 242.1007 is revised to read as follows:

242.1007 Content of advance agreements.

(e)(S–70) The agreement shall specifically note that:

(i) A review of the proposed IR&D/B&P projects for potential interest to DoD was performed; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

7. Section 242.1008 is revised to read as follows:

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member, and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S–70)(1) *For the Army.* The Deputy Assistant Secretary (Procurement) will appoint the acquisition member. The Deputy Assistant Secretary (Research and Technology) will appoint the technical member. The Deputy General Counsel (Acquisition) will appoint the legal member.

(2) *For the Navy.* The Principal Deputy Assistant Secretary (Research, Development and Acquisition) will appoint the acquisition member and the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member and the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

[FR Doc. 91–21979 Filed 9–11–91; 8:45 am]
BILLING CODE 3810–01–M

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