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Tuesday
April 10, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Air Carriers
Civil Aeronautics Board

Animal Biologics
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Consumer Protection
Consumer Product Safety Commission

Crop Insurance
Federal Crop Insurance Corporation

Endangered and Threatened Species
Fish and Wildlife Service

Food Assistance Programs
Food and Nutrition Service

Government Procurement
Interior Department

Government Property Management
General Services Administration

Grant Programs—Education
Arts and Humanities, National Foundation

Marketing Agreements
Agricultural Marketing Service

CONTINUED INSIDE

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Selected Subjects

Marketing Quotas
Agricultural Stabilization and Conservation Service

Mortgage Insurance
Housing and Urban Development Department

Motor Vehicle Pollution
Environmental Protection Agency

Occupational Safety and Health
Occupational Safety and Health Administration

Privacy
Health and Human Services Department

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

Agricultural Marketing Service
RULES
14083 Grapes grown in Calif.
PROPOSED RULES
14112 Almonds grown in Calif.
NOTICES
Committees; establishment, renewals, terminations, etc.:
14154 Tobacco Inspection Services National Advisory Committee

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
14282 Peanuts; poundage quotas

Agriculture Departmental
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Forest Service.

Animal and Plant Health Inspection Service
PROPOSED RULES
Viruses, serums, toxins, etc.:
14288 Biological products, production requirements, etc.; restrictions on movements, etc.

Arts and Humanities, National Foundation
RULES
14108 Museum Services Institute; grant program regulations; amendments
NOTICES
Meetings:
14218 Dance Advisory Panel (2 documents)
14218 Visual Arts Advisory Panel

Centers for Disease Control
NOTICES
14189 Advisory committees; annual reports; availability
Committees; establishment, renewals, terminations, etc.:
14190 Childhood Lead Poisoning Prevention Advisory Committee

Civil Aeronautics Board
RULES
Air carriers:
14085 Baggage liability, domestic; interpretation

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.

Consumer Product Safety Commission
RULES
14095 Cribs with hardware failures or omissions; risks of injury

Defense Department
See Engineers Corps; Navy Department.

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
14210 McCown, Coleman, Preston, D.D.S.; hearing rescheduled

Economic Regulatory Administration
NOTICES
Consent orders:
14164 Cordele Operating Co.
Remedial orders:
14165 Holly Energy, Inc., et al.
14165 Saxon Oil Co.
14165 Storey Oil Co., Inc.
14165 Texakota, Inc.
14165 Traco Petroleum Co.

Employment and Training Administration
NOTICES
Adjustment assistance:
14211 Clark Equipment Co.
14212 Cooper Industries, Inc., et al.
14212 East Coast Molding Operation et al.

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission.

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
14163 Southeast Missouri Port Cape Girardeau and Scott Counties, Mo.

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
14104 Coil coating; canmaking plants; correction
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
14244 Methanol-fueled motor vehicles emission standards and methanol-gasoline fuel equivalency factor
Air quality implementation plans; approval and promulgation; various States:
14145 Ohio
NOTICES
Air pollution; control techniques guideline documents; availability, etc.:
14181 Synthetic organic chemical and polymer manufacturing; volatile organic compound (VOC) equipment leaks
Meetings:
14185 Science Advisory Board

Pesticide programs:
14182 Ethylene dibromide; intent to cancel registration of pesticide products
Water pollution; discharges of dredged or fill material; State program approval:
14185 Michigan

Equal Employment Opportunity Commission
NOTICES
14242 Meetings; Sunshine Act; correction

Federal Aviation Administration
NOTICES
14236 Exemption petitions; summary and disposition
Meetings:
14237, 14238 Aeronautics Radio Technical Commission (2 documents)
14235 Air Traffic Procedures Advisory Committee

Federal Communications Commission
RULES
Common carrier services:
14111 Jurisdictional separations procedures; effective date deferred
NOTICES
14186, 14187 Agency information collection activities under OMB review (2 documents)
Common carrier services:
14186 International communications competition; procedures and policies; extension of time
Meetings:
14187 Technical Standards for DBS Service Systems Advisory Committee
14186 Rulemaking proceedings filed, granted, denied, etc.; petitions

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
14078 Popcorn

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
14187 North Carolina
14187 South Carolina

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
14166 ANR Pipeline Co.
14166 Consolidated Gas Supply Corp.
14166 Consolidated Gas Transmission Corp.
14167 Great Lakes Gas Transmission Co.
14167 Kentucky West Virginia Gas Co.
14167 K N Energy, Inc.
14168, 14170 Montana-Dakota Utilities Co. (2 documents)
14171, 14172 National Fuel Gas Supply Corp. (4 documents)
14172 Northwest Pipeline Corp.
14173 Northwest Pipeline Corp. et al.
14173 Pacific Power & Light Co.
14173 Panhandle Eastern Pipe Line Co.
14175 Southern Natural Gas Co.
14174, 14175 South Georgia Natural Gas Co. (2 documents)
14176 Transcontinental Gas Pipe Line Corp. (2 documents)
14177 Trunkline Gas Co.
14177 Valley Gas Transmission, Inc.
14177 Western Gas Interstate Co.
Small Power production and cogeneration facilities; qualifying status; certification applications, etc.:
14168 ARCO Metals Co.
14169 Birch Creek Hydro, Inc. (2 documents)
14169 Covington, Va.
14170 Electrodyne Research Corp.
14170 Fluid Energy Systems, Inc.
14170 Mercy Hospital and Medical Center
14178 Pacific Lighting Energy Systems (3 documents)
14178–14181 Synergics, Inc. (8 documents)

Federal Highway Administration
NOTICE
Environmental statements; availability, etc.:
14238 Washtenaw County, Mich.; intent to prepare; withdrawn

Federal Maritime Commission
NOTICES
14187 Agreements filed, etc.
Freight forwarder licenses:
14188 Sopac Transport Corp.
14188 Transeurope Shipping Inc.

Federal Mine Safety and Health Review Commission
NOTICES
14242 Meetings; Sunshine Act

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
14238 West Virginia Northern Railroad, Inc., et al.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
14188 BankAmerica Corp.
14189 Mansfield Bankstock, Inc.
14189 Minnesota Assets Management Corp. et al.
14242 Meetings; Sunshine Act

Federal Trade Commission
RULES
Prohibited trade practices:
14087 Cliffdale Associates, Inc.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
14152 Ash Meadows, Nev. and Calif.; plant and insect species, etc.; hearing and comment period reopened
14149 Colorado squawfish and woundfin

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
14103 Chlortetracycline hydrochloride tablets; correction
14103 Prochlorperazine, isopropamide, with neomycin sustained-release capsules
NOTICES
Medical devices; premarket approval:
14190 Ciba Vision Care

Food and Nutrition Service
RULES
Child nutrition programs:
14077 Summer food services and child care food programs; nondiscrimination based on age

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
14154 New York
14155 Oklahoma; extension of time

Forest Service
RULES
Timber sales, national forest:
14103 Contracts extension; interim policy
NOTICES
Environmental statements; availability, etc.:
14154 Custer National Forest, Mont.
Meetings:
14154 San Juan National Forest Grazing Advisory Board

General Services Administration
RULES
Property management:
14105 Space, assignment and utilization; temporary
14105 Transportation documentation and audit (Standard Form 1131); Government transit bill of lading; form cancelled
PROPOSED RULES
Property management:
14147 Transportation documentation and audit (Standard Form 1103); Government bill of lading—original
14147 Transportation documentation and audit (Standard Form 1169); Government Transportation Request (GTR)

Geological Survey
NOTICES
Committees; establishment, renewals, terminations, etc.:
14208 National Earthquake Prediction Evaluation Council

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Human Development Services Office.
RULES
14107 Privacy Act; implementation

Housing and Urban Development Department
PROPOSED RULES
Mortgage and loan insurance programs:
14113 Second mortgages or liens; escrow accounts associated with interest buy-downs
NOTICES
14195-14197 Agency information collection activities under OMB review (5 documents)
14191 Privacy Act; computer matching program with objective of obtaining salary and benefit attachments to discharge debts owed to Government
14192 Privacy Act; systems of records

Human Development Services Office
NOTICES
Grants; availability, etc.:
14248 Indian tribes; supportive and nutritional services for older Indians

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
14198 Fort Hall Indian Reservation, Idaho
14206 Shakopee Mdewakanton Sioux Community

Interior Department
See also Fish and Wildlife Service; Geological Survey; Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau.
RULES
14252 Acquisition regulations

International Trade Administration
RULES
14087 Commodity control list amendments; correction
NOTICES
Antidumping:
14156 Carbon steel wire rod from Brazil
14159 Railway track maintenance equipment from Austria
14160 Export trade certificates of review; applications
Scientific articles; duty-free entry:
14158 Harvard University
14155 University of Florida et al.
14159 University of Iowa Hospitals and Clinics

International Trade Commission
NOTICES
14242 Meetings; Sunshine Act

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration.
NOTICES
14210 Agency information collection activities under OMB review

Land Management Bureau
RULES
Public land orders:
14107 Colorado
NOTICES
Exchange of public lands for private land:
14208 California; correction
Geothermal resources areas:
14207 New Mexico
Oil and gas leases:
14208 New Mexico
Sale of public lands:
14207 California

Mine Safety and Health Administration
NOTICES
Petition for mandatory safety standard modifications:
14213 American Coal Co., Inc.

14213 Everidge & Nease Coal Co., Inc.
14216 Jewell Ridge Coal Corp.
14214 Jim Walter Resources, Inc.
14214 John Behm Coal Co.
14214 North River Energy Co.
14215 Powellton Co.
14216 Turris Coal Co.
14216 Washington Irrigation & Development Co.

National Aeronautics and Space Administration
NOTICES
Meetings:
14217 Advisory Council

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
14153 American lobster; correction
NOTICES
Endangered and threatened species:
14161 Chesapeake Bay strain of striped bass; petition denied

National Park Service
NOTICES
Historic Places National Register; pending nominations:
14209 Arizona et al.

National Transportation Safety Board
NOTICES
14242 Meetings; Sunshine Act

Navy Department
NOTICES
Meetings:
14163 Chief of Naval Operations Executive Panel Advisory Committee
14164 Naval Research Advisory Committee

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
14218 Arizona Public Service Co.
14221 Florida Power & Light Co.
Meetings:
14220, 14221 Reactor Safeguards Advisory Committee (2 documents)

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
14116 Asbestos; occupational exposure

Pension Benefit Guaranty Corporation
NOTICES
Multi-employer pension plans; bond/escrow exemption requests:
14226 Manley Truck Line, Inc.

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
14208, 14209 Santa Margarita Project, San Diego County, Calif. (2 documents)

Securities and Exchange Commission
NOTICES
Hearings, etc.:
14227 Pioneer Fund, Inc., et al.
14230 Storage Equities, Inc.
Self-regulatory organizations; proposed rule changes:
14230 Municipal Securities Rulemaking Board

Small Business Administration
NOTICES
Applications, etc.:
14231 Delta Capital, Inc.
14232 NCNB Venture Corp. et al.
14232 Rocky Mountain Ventures, Ltd.
14233 U.C. Capital, Inc.
Disaster loan areas:
14231 Florida
14231 North Carolina
14232 South Carolina
14233 Texas
14233 Utah
License surrenders:
14233 Venray Capital Corp.
Meetings; regional advisory councils:
14232 California
14232 Utah

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
14234 Canon de Marquez, McKinley County, N. Mex.; underground uranium mining project

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
14162 Haiti
14162 Peru

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Urban Mass Transportation Administration.

Urban Mass Transportation Administration
NOTICES
14239 Uniform system of accounts and records and reporting system; storing and publishing transit data collected under Section 15 of Urban Mass Transportation Act; operating procedures change

Veterans Administration
NOTICES
Meetings:
14240 Women Veterans Advisory Committee

Separate Parts in This Issue

Part II
14244 Environmental Protection Agency

Part III
14248 Department of Health and Human Services, Office of Human Development Services

Part IV
14252 Department of the Interior, Office of the Secretary

Part V
14282 Department of Agriculture, Agricultural Stabilization and Conservation Service

Part VI
14288 Department of Agriculture, Animal and Plant Health Inspection Service

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
225 14077
226 14077
447 14078
729 14282
925 14083
944 14083
Proposed Rules:
981 14112

9 CFR
Proposed Rules:
113 14288
114 14288

14 CFR
298 14085

15 CFR
399 14087

16 CFR
13 14087
1145 14095

21 CFR
520 14103
546 14103

24 CFR
Proposed Rules:
203 14113
213 14113
234 14113
235 14113

29 CFR
Proposed Rules:
1910 14116

36 CFR
223 14103

40 CFR
465 14104
Proposed Rules:
52 14145
86 14244
100 14244

41 CFR
101-17 14105
101-41 14105
Proposed Rules:
101-41 (2 docs) 14147

43 CFR
PLO 6529 14107

45 CFR
5b 14107
1180 14108

47 CFR
67 14111

48 CFR
Ch. 14 14252

50 CFR
Proposed Rules:
17 (2 docs) 14149, 14152
649 14153

Rules and Regulations

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225 and 226

Summer Food Service Program, Child Care Food Program; Nondiscrimination Based on Age

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is amending the Summer Food Service Program (SFSP) and the Child Care Food Program (CCFP) (7 CFR Parts 225 and 226) to incorporate *age* into both these regulations to comply with the Age Discrimination Act of 1975 (Pub. L. 94–135). This change is being made to update the civil rights assurance categories to add *age* to the other protected classes.

EFFECTIVE DATE: This rule takes effect April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley C. Garnett, Acting Branch Chief, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Pursuant to that review, Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. Because this rule serves only to conform program regulations to the prohibition against discrimination on the basis of age in the Child Care Food Program and the Summer Food Service Program as already required by the Age Discrimination Act of 1975, good cause exists for publishing this amendment as a final rule without soliciting public comment. Furthermore, because this rule simply provides further public notice of the prohibition on age discrimination which already applies to these programs pursuant to Department-wide regulations, good cause exists for making this rule effective upon publication.

No new reporting and recordkeeping requirements have been included that are subject to approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

In November 1975, Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). The purpose of this Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance.

Furthermore, this Act contains several exceptions which limit the general prohibition against age discrimination. The exception that is of particular applicability to the Child Care and Summer Food Service Programs is for any program or activity which provides benefits or assistance to persons based upon the age of such persons or establishes criteria for participation in age-related terms. The objective of these Programs is to serve nutritious meals to needy *children*. Moreover, the public laws governing the Programs specifically limit eligibility based on age. As a result, the use of age as an eligibility factor in these Programs is allowable, since it falls within the "statutory objective" exception to the general prohibition against age discrimination in the Age Discrimination Act of 1975. However, the nondiscrimination requirement does apply to other aspects of the CCFP and SFSP.

The Department has made every effort to incorporate age as a protected class into program documents as they are updated. On December 7, 1979, the Department issued a notice (44 FR 70450) announcing that it was operating under the government-wide nondiscrimination regulations published by the Department of Health and Human Services, formerly the Department of Health, Education, and Welfare (45 CFR Part 90). The Food and Nutrition Service (FNS) has recently been advised that it must revise all civil rights assurances to promulgate program policy and provide guidance on discrimination in the administration of its programs. The FNS has updated policy on civil rights compliance and enforcement by issuing: (1) FNS Instruction 113–4 (December 16, 1982), which provides guidance on nondiscrimination in the administration of the CCFP, and (2) FNS Notice 83–70 (May 27, 1983), which provides guidance for the administration of the SFSP. In addition to updating these policies, all Program publications, guidance materials, and handbooks are being revised to include comprehensive nondiscrimination statements.

The Department is now amending the current SFSP and CCFP regulations by inserting the word "age" in the list of protected classes. Inserting "age" into both the Program regulations, does not constitute an "open" policy for participants of all ages to apply. These Programs by law restrict eligibility based on age with the intent of serving nutritious meals to needy *children*. Children is generally defined in the SFSP as 18 years of age and under, and in the CCFP as 12 years of age and under. Both Programs have age exceptions for the handicapped and the CCFP provides benefits to migrant worker's children 15 years of age and under.

Section 226.6(e)(1) is also being changed slightly to include reference to Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973. Although sex and handicap were previously added to

the list of protected classes in this section, the citations to the statutes were inadvertently omitted.

The Department is therefore amending the SFSP and the CCFP regulations to include age to the other protected classes as follows:

List of Subjects

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 225 and 226 are amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

1. In § 225.9, the first sentence of paragraph (h)(1) is revised to read as follows:

§ 225.9 Program monitoring and assistance.

* * * * *

(h) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program. * * *

* * * * *

2. In § 225.21, the last sentence in paragraph (c) is amended by inserting the word "age" between the words "sex," and "or" and paragraph (b)(6) is revised to read as follows:

§ 225.21 Free meal policy.

* * * * *

(b) * * *

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. In § 226.6, paragraph (d)(2)(i)(B) is amended by inserting the word "age" between the words "sex," and "or" and the second sentence of paragraph (e)(1) is revised to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(e) * * *

(1) * * * The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this Part, and comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

* * * * *

§ 226.23 [Amended]

2. In § 226.23, paragraph (b), (c)(5), and the last sentence in paragraph (d) are amended to add the word "age" between the words "sex," and "or".

Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Dated: April 3, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 84-9633 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 447

Popcorn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Part 447 in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring popcorn. The intended effect of this rule is to be responsive to producers growing popcorn who have expressed a desire for crop insurance protection. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is September 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

In the past, crop insurance has not been available to growers of corn for processing as popcorn. Such crop is exposed to similar hazards as other crops insured by FCIC. Following several meetings with both producers and processors, FCIC determined that such a program of crop insurance

protection was needed. On May 24, 1983, the Board of Directors of FCIC approved Docket No. CI-Pc-84-1, authorizing FCIC to develop a program of popcorn insurance initially in Illinois, Indiana, Iowa, and Nebraska, effective for the 1984 and succeeding crop years, with expansion based on insuring experience into additional states at a later date. The regulations contained in this rule are effective for the 1984 and succeeding crop years offering protection against crop damage or loss from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcanic eruption.

On Wednesday, November 30, 1983, FCIC published a notice of proposed rulemaking to prescribe procedures for insuring popcorn. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Popcorn Institute, Washington, D.C., representing firms which contract for and represent approximately 90 percent of all popcorn grown in the United States. The Institute, in expressing its support of the program, offered two suggestions which have been considered by FCIC. The Institute recommended that the price elections offered to the producer be neither an artificial stimulant or artificial depressant to the production of popcorn, and that the average market price of the preceding year is not a reliable guide. The representative processors should be polled, recommended the Institute, to determine the range of contract prices being offered and to base the price election for purposes of popcorn crop insurance on an average price set under these contracts. FCIC has determined that, for the 1984 crop year, the time has passed when such a review may be made but that this suggestion would be given consideration for the 1985 crop year, and that FCIC would work with the popcorn industry in establishing price elections. The second suggestion by the Institute was to extend the insurance period to November 15 of the crop year in which popcorn is normally harvested, instead of the proposed October 31, because of weather delayed harvests that, in some years, may extend into November. FCIC has determined to adopt this latter suggestion for the reasons offered, but to establish the insurance period ending on December 10 of the crop year in which the crop is normally harvested. The regulations published herein reflect this change in the insurance period.

List of Subjects in 7 CFR Part 447

Crop insurance, Popcorn.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 447 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 447 Popcorn Crop Insurance Regulations, effective for the 1984 and succeeding crop years, to read as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.
447.1 Availability of popcorn insurance.
447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
447.3 OMB control numbers.
447.4 Creditors.
447.5 Good faith reliance on misrepresentations.
447.6 The contract.
447.7 The application and policy.
Appendix A—Counties Designated for Popcorn Crop Insurance

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1984 and Succeeding Crop Years

§ 447.1 Availability of popcorn insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which popcorn insurance will be offered.

§ 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the county actuarial table on file in applicable service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 447.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 447) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, an involuntary transfer, or similar interest shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 447.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the popcorn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured persons relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 447.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the popcorn as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the

contract are available at the service office.

§ 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the popcorn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Popcorn contracts in effect for the 1984 crop year may be amended from year to year and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for subsequent crop years unless the policy is terminated.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Popcorn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake; or

(7) Volcanic eruption; unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(6).

b. We shall not insure against any loss of production due to:

(1) The neglect mismanagement or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good popcorn farming practices or the grower provisions of the popcorn contract;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;

(4) Damage resulting from frost or freeze after the date designated by the actuarial table; or

(5) Any cause not specified in subsection 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be popcorn which is planted for harvest, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting.

d. We do not insure any acreage:

(1) Of popcorn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage.);

(2) Which is destroyed and we determine it is practical to replant to popcorn and such acreage is not replanted;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good popcorn irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good popcorn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitations established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a contract under which you have the share in the popcorn.

3. Report of acreage, share, yield, and practice.

You shall report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The most recent year's production for the insurable acreage on each unit.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any popcorn planted in the county. This report shall be submitted annually before the reporting date estabished by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guaranteees, coverge levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year, as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the preimum rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the popcorn is planted and ends at the earliest of:

a. Total destruction of the popcorn;

b. Harvest;

c. Final adjustment of a loss; or

d. December 10 of the calendar year in which the popcorn is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant popcorn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage has been replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of the unharvested popcorn (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the popcorn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the popcorn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of popcorn to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity shall be reduced proportionately.

e. The indemnity shall be reduced by the amount of any replanting payment.

f. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature popcorn production:

(a) Which otherwise is not eligible for quality adjustment shall be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent; or

(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor, shall be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

(2) Any production from yellow or white dent corn shall be counted as popcorn on a weight basis.

(3) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good popcorn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraisal production on unharvested acreage.

(4) Any appraisal we have made on insured acreage and given written consent to be put to another use shall be considered as production unless such acreage:

(a) Is not put to another use before harvest of popcorn becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested popcorn on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the popcorn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78 "Request to Exclude Hail and Fire".

(7) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured popcorn replanted after we have given consent and the acreage replanted is at least the lessor of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 150 pounds multiplied by the price election, the product of which is multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment shall be reduced proportionately.

Any replanting payment shall be considered as an indemnity.

h. You shall not abandon any acreage to us.

i. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We shall pay the loss within 30 days after we reach agreement with you or entry or a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire from the policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvest, storage, shipment, sale, or other disposition of all of the popcorn produced on each unit including separate records showing the same information for production for any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the policy on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of popcorn crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding popcorn insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

(c) "Crop year" means the period within which the popcorn is normally grown and shall be designated by the calendar year in which the popcorn is normally harvested.

(d) "Harvest" means the completion of removing the grain from the stalk either by hand or machine.

(e) "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

(f) "Insured" means the person who submitted the application accepted by us.

(g) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, political subdivision of a State, or any agency thereof.

(h) "Replant" means performing the cultural practices necessary to replant insured acreage to popcorn.

(i) "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(j) "Tenant" means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

(k) "Unit" means all insurable acreage of popcorn in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the popcorn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with appeal regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A.—Counties Designated for Popcorn Crop Insurance

The following counties are designated for Popcorn Crop Insurance under the provisions of 7 CFR 447.1.

Illinois

Lee	Saline
Mason	

Indiana

Huntington	Washington
LaGrange	White

Iowa

Fremont	Sac
Monona	

Nebraska

Chase	Dawson
Clay	Holt

Ohio

Fairfield	Van Wert
Madison	

Done in Washington, D.C., on February 15, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: April 2, 1984.

[FR Doc. 84-9462 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-06-M

Agricultural Marketing Service

7 CFR Parts 925 and 944

[California Desert Grape Reg. 4; Table Grape Import Reg. #2]

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum requirements for shipments of table grapes grown in southeastern California, and for such table grapes imported into the United States, except for the Emperor, Calmeria, Almeria, and Ribier varieties which are not grown in the production area in southeastern California. Such grapes are required to meet the minimum grade and size requirements for U.S. No. 1 Table Grade, as defined in the United States Standards for Grades of Table Grapes (European or Vinifera Type), and minimum maturity standards as defined in the California Administrative Code. For table grapes grown in southeastern California additional requirements are effective, including container and pack, container marking, and packing holidays. These actions are needed to assure the shipment of ample supplies of table grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

DATES: California Desert Grape Regulation 4 is effective April 23, 1984, through August 5, 1984; Table Grape Import Regulation 2 is effective May 1, 1984, through August 5, 1984. The Director of the **Federal Register** approves the incorporation by reference of certain publications in 7 CFR 925.303 and 944.502 during the specified periods.

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

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

The California Desert Grape Administrative Committee met March 23 and 28, 1984, and unanimously recommended grade, size, maturity, container, pack, and other requirements for 1984 season table grapes grown in southeastern California, to be effective for the period April 23–August 5, 1984. The committee has projected that shipments of grapes regulated under the Federal marketing order will begin on or about April 23, 1984, and that the California desert grape regulation should become effective by that date. This season's very early maturity of the grape crop is attributable to the mild weather last winter and the very warm temperatures in March of this year which resulted in advanced development of the crop. Establishment of an effective date later in the season could result in shipment of immature or otherwise substandard grapes early in the season and thereby negate the

objective of orderly marketing of the crop.

California Desert Grape Regulation 4 requires shipments of table grapes grown in the production area in southeastern California to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Type). In addition, such grapes will also be required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are excepted from regulation as they are not grown in the production area. The regulation also establishes certain container and pack requirements as well as container marking requirements in order to standardize packing practices. Experimental containers approved by the committee may also be used. A minimum of 22 pounds of grapes must be packed in each of the authorized containers, except for certain packs and experimental containers. Containers must bear the minimum net weight of the grapes in the container, the name of the grape variety, the name of the shipper, and the lot stamp inspection number on the outside of the container. Such requirements are designed to facilitate identification of shipments and promote orderly marketing of these grapes. Packing holidays on Saturdays and Sundays and certain holidays during the regulation period are also established and are designed to prevent an accumulation of excessive supplies of table grapes at distribution points during periods of reduced demand or market inactivity. The regulation exempts "organically-grown" table grapes from the minimum individual berry size requirement. Also, table grapes for processing are exempt from regulation if certain conditions and safeguards are met. The California desert grape regulation is issued under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Table Grape Import regulation 2 requires imports of table grapes to meet the same minimum grade, size, and maturity requirements as specified in California Desert Grape Regulation 4. The effective period of the import regulation shall be May 1, 1984, through August 5, 1984. Establishment of a beginning date for the import regulation later than the beginning date for the domestic regulation recognizes the additional time required for transportation of grapes from grape-exporting countries to the United States. Under the circumstances, it is concluded that the May 1, 1984, effective date provides adequate notice of grade, size, and maturity restrictions applicable to imported grapes. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempt from import requirements as they are not regulated under the California desert grape regulation. The table grape import regulation is issued under Section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 8e requires that when specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The Secretary finds that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the California table grape regulation at an open meeting at which the committee, without opposition, recommended regulations applicable to California desert grapes to become effective April 23, 1984. California table grape handlers have been apprised of these requirements and the effective date. The import requirements for table grapes are mandatory under § 8e of the Act and adequate notice is provided. It is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreement and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PART 925—[AMENDED]

Therefore, new §§ 925.303 and 944.502 are added to read as follows: (§§ 925.303 and 944.502 expire August 5, 1984, and will not be published in the annual Code of Federal Regulations).

§ 925.303 California Desert Grape Regulation 4.

During the period April 23, 1984, through August 5, 1984, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided*, That no person shall pact any such grapes on any Saturday or Sunday, or on May 28 or July 4, 1984, unless approved in accordance with paragraph (e).

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and which otherwise meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3):

(i) Sawdust pack with inside dimensions of 7¾ x 14 15/16 x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅜ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) x 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ x 11½ x 18⅛ inches, specified as containers 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) x 15¾ outside) x 19 1/16 outside), specified as containers 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing materials, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) the handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on May 28 or July 4, 1984, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, N.W. Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

PART 944—[AMENDED]

§ 944.502 Table Grape Import Regulation 2.

(a) Applicability to imports: (1) Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 1, 1984, through August 5, 1984, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code of California (Title 3).

(2) Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

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

Dated: April 4, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-9386 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Reg. ER-1378; Econ. Regs. Amend. No. 27 to Part 298]

Exemptions for Air Taxi Operations; Interpretive Amendment

AGENCY: Civil Aeronautics Board.

ACTION: Interpretative amendment.

SUMMARY: The CAB is revising its rules for air taxi operators and dual authority air carriers to conform to the recent comprehensive final rule on domestic baggage liability. This rule is adopted on the Board's initiative.

DATES: Adopted: April 4, 1984. Effective: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Section 298.30. *Public disclosure of policy on consumer protection,* requires every air taxi to conspicuously post a counter sign that states the air taxi's policy on

baggage liability and denied boarding compensation. Since air taxis may have differing policies, each air taxi is free to write its own statement.

The Board recently completed its comprehensive rulemaking on domestic baggage liability. On December 23, 1983, the Board adopted a final rule (ER–1374, 49 FR 5064, February 10, 1984) that will be codified as 14 CFR Part 254. ER–1374 applies to all flight segments using large aircraft (60 or more passenger seats) or to any flight segment that is included on the same ticket as another flight segment that uses large aircraft. The rule provides that on such flights, air carriers shall not limit their liability for the disappearance of, damage to, or delay in delivery of, a passenger's personal property, including baggage, in its custody to less than $1250 per passenger. In addition, Part 254 requires air carriers to provide written notice to passengers on or with their tickets concerning their baggage liability limitations. Carriers have the choice of either providing notice of their monetary limitation or using the Board-mandated notice.

In ER–1374, the Board noted that it would have to consider the application of the rule to small aircraft operations in a separate proceeding. Part 254 is applicable only to flights on small aircraft that are included on the same ticket as a flight on a large aircraft. Therefore, carriers operating small aircraft may have different liability limitations for passengers on the same plane depending on the passengers' itineraries and how the tickets are written. This rule conforms the notice and applicability requirements of Part 298, *Exemptions for Air Taxi Operations*, to the general rule set forth in Part 254.

This rule revises § 298.30 by redesignating the present requirement as paragraph (a) and adding paragraphs (b) and (c). This amendment makes no change in the requirement that air taxis state their policy on baggage liability and denied boarding compensation. If an air taxi has two liability limitations, it should provide notice to passengers on its counter signs of that fact. Paragraph (b) cross references the requirement that air carriers provide written notice to passengers on or with their tickets as provided in 14 CFR 254.5. Such ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft. Paragraph (c) states that if the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the ticket notice govern.

The Board orders governing domestic baggage liability, which will be in effect until April 10, 1984, are directly applicable to only certificated air carriers. Because dual authority carriers have many of the characteristics of certificated carriers in their air taxi operations, the Board up until now has held them to the standards required for certificated air carriers for all of their operations. From a practical standpoint, this has meant that such air taxi operators could not limit their liability for lost, damaged or delayed baggage below $750 per person.

Under the new Part 254, the applicability of the minimum baggage liability limitations is based on aircraft size and how the passenger's ticket is written. This interpretative amendment conforms the baggage liability rules for air taxi operations by certificated carriers to the applicability section of Part 254. A dual authority carrier shall not, in the future, limit its liability below $1250 per passenger for a passenger whose ticket includes a flight segment that uses large aircraft. If a dual authority carrier chooses to provide the Board-mandated coverage for all of its passengers, however, it is free to do so.

Because this is an interpretative amendment, the Board finds that notice and comment on this change is unnecessary. In addition, the Board finds that the public interest requires that this interpretive amendment should be effective on less than 30 days' notice. The comprehensive final rule on domestic baggage liability will be effective on April 10, 1984. This amendment, which merely conforms the air taxi rules to the requirements of Part 254, must be effective as close to that date as possible in order to prevent unnecessary confusion within the industry and among passengers.

Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Board certifies that none of these changes will have a significant economic impact on a substantial number of small entities. This rule merely conforms the notice requirements for air taxis with the comprehensive rule on domestic baggage liability, and clarifies the applicability of Part 254 to dual authority carriers. A further discussion of the domestic baggage rule and its relation to the Regulatory Flexibility Act may be found at 49 FR 5067, February 10, 1984.

List of Subjects in 14 CFR Part 298

Air carriers, Postal Service, Reporting and recordkeeping requirements.

McConnell, Vice Chairman, concurring: I concur that this interpretative amendment supports the baggage liability standards enacted by the Board in December. However, the amendment demonstrates why I believe that government rules concerning baggage liability should be minimized.

In those rules another category of air carrier, air taxis, will be subject to requirements increasing their consumer notices at their ticket counter. The expanded notices could easily lead to confusion. Many passengers will receive two notices: one at the ticket counter and one on their ticket. Only those passengers who (1) read both notices, (2) recognize the difference, and (3) know this rule will realize that the fine print on the ticket actually applies to any lost or damaged bags.

I agree that passengers should be given notice of their rights and the terms of carriage. But conflicting notices serve only to confuse and are symptomatic of too much regulation.

Barbara E. McConnell.

PART 298—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 298, *Exemptions for Air Taxi Operations*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, and 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

2. Section 298.30 is amended by designating the previous text as paragraph (a) and by adding paragraphs (b) and (c) to read:

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi's policy on baggage liability and denied boarding compensation.

(b) An air taxi shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this Chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

3. Section 298.95 is revised to read:

§ 298.95 Baggage liability.

The rules for baggage liability are set forth in Part 254 of this chapter. Certificated air carriers that operate under this part shall provide the notices set forth in §§ 298.30 and 254.5 of this chapter.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-9537 Filed 4-9-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 40124-07]

Amendments to the Commodity Control List

Correction

In FR Doc. 84-8438 beginning on page 12678 in the issue of Friday, March 30, 1984, make the following correction.

On page 12681, third column, first line from the top, in the heading for 1564A "Economic" should read "Electronic".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9156]

Cliffdale Associates, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order.

SUMMARY: This order requires a Westport, Conn. firm and two individuals engaged in the advertising, sale and distribution of an automobile retrofit device variously known as the Ball-Matic, the Ball-Matic Valve, the Ball-Matic Gas Saver Valve, and the Gas Save Valve, among other things, to cease representing that the device is a unique or new product; and that it is needed on every vehicle except Volkswagens, diesels and fuel-injected vehicles. The company is barred from making fuel economy improvement claims for the device unless it can reasonably support those claims with competent and reliable substantiation. The order further prohibits the firm from representing that a consumer endorsement is a typical experience of a user of the product; using any endorsement unless they have good reason to believe that the endorser subscribes to the facts and opinions set forth in that endorsement; and failing to disclose any material relationship existing between the endorser and respondents. Additionally, the company may not make any unsubstantiated energy savings claims for any product or misrepresent the results of any test or survey.

DATES: Complaint issued July 7, 1981. Order issued March 23, 1984.*

FOR FURTHER INFORMATION CONTACT: FTC/PA, William Haynes, Washington, D.C. 20580. [202] 376-8720.

SUPPLEMENTARY INFORMATION: In the Matter of Cliffdale Associates, Inc., a corporation; Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc.; and Arthur N. Sussman, an individual. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: §13.42 Connection of others with goods; § 13.110 Endorsements, approval and testimonials; § 13.170 Qualities or properties of product or service; 13.170-34 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests; § 13.255 Surveys; § 13.280 Unique nature or advantages. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; 13.330-94 Users, in general. Subpart—Corrective Actions and/or Requirements: §13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: §13.1665 Endorsements; §13.1710 Qualities or properties; §13.1730 Results; §13.1740 Scientific or other relevant facts; §13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: §13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Automobile retrofit devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Order, including further order requiring report of compliance therewith, is as follows:

Before the Federal Trade Commission

[Docket No. 9156]

Order

In the Matter of Cliffdale Associates, Inc., a corporation; Jean-Claude Koven individually and as an officer of Cliffdale Associates, Inc., Arthur N. Sussman, an individual.

Part I

It is ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other devise, in connection with the advertising, offering for sale, sale or distribution of the automobile retrofit device variously known as the Ball-Matic, the Ball-Matic Valve, the Ball-Matic Gas Saver Valve and the Gas Save Valve, or any other automobile retrofit device (as "automobile retrofit device" is defined in Section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011) having substantially similar properties, in or affecting commerce as "commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that such device is a unique product or new invention; and

b. Representing, directly or by implication, that such device is needed on every vehicle except Volkswagens, diesel vehicles and fuel injection vehicles.

Part II

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, and Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile gasoline additive, engine oil additive, or automobile retrofit device (as

* Copies of the Complaint, Initial Decision, Opinion of the Commission, and the Order are filed with the original documents.

"automobile retrofit device" is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle unless, and only to the extent, respondents possess and rely upon a reasonable basis which substantiates such representation at the time of its initial and each subsequent dissemination. This reasonable basis shall consist of competent and reliable tests, such as:

a. Chassis dynamometer tests done according to procedures that simulate typical urban and highway driving patterns, such as the then current urban and highway driving test schedules established by the Environmental Protection Agency; or

b. Track or road tests done according to procedures that simulate urban and highway driving patterns, such as the then current procedures established in the Society of Automobile Engineers' J1082b test protocol.

A competent and reliable test means one in which persons qualified to do so conduct the test and evaluate its results in an objective manner using procedures that insure accurate and reliable results.

Respondents shall, when using the results of any tests required by this Part, clearly and conspicuously disclose the limitations upon the applicability of the results to any automobile, truck, recreational vehicle, or other motor vehicle. Where the results of such tests are used in connection with a representation of fuel economy improvement expressed in miles per gallon (or liter), miles per tankful, or percentage, or where the representation of the benefit is expressed as a monetary saving in dollars or percentages, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously disclose the following disclaimer: "Reminder: Your actual saving may vary. It depends on the kind of driving you do, how you drive and the condition of your car."

Part III

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Using, publishing, or referring to any endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained;

b. Failing to disclose a material connection, where one exists, between an endorser of any product or service and any of the respondents. A "material connection" shall mean, for purpose of this order, any relationship between an endorser of any product or service and any individual or other entity marketing such product or service which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

c. Representing, directly or by implication, any energy savings or energy consumption characteristics of any product, other than any gasoline additive, engine oil additive, or automobile retrofit device (as "automobile retrofit device" is defined in the Automobile Information and Cost Savings Act, 15 U.S.C. 20.11), unless, at the time of making the representation, respondents possess and reasonably rely upon competent and reliable evidence that substantiates such representation;

d. Representing, directly or by implication, that any consumer endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product unless this is the case;

e. Misrepresenting, in any manner, the purpose, procedure, results, or conclusion of any test or survey pertaining to the energy saving or energy consumption characteristics of any product.

Part IV

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, and Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any fuel saving product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurately the following records which may be inspected by Commission staff members upon fifteen (15) days' notice: copies of and dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials; documents relating to the use of or publication of endorsements; records of the number of pieces of direct mail advertising sent in each direct mail advertisement dissemination; documents which substantiate, contradict, or otherwise relate to any claim which is a part of the advertising, sales promotional materials, or post/purchase materials disseminated by respondents directly or through any business entity. Such documentation shall be retained by respondents for a period of three (3) years from the last date any such advertising, sale promotional materials, or post-purchase material is disseminated.

Part V

It is further ordered that the corporate respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to all present and future personnel, agents, or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order and that the corporate respondent shall secure from each such person a signed statement acknowledging receipt of the order.

Part VI

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

Part VII

It is further ordered that the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with each new business or employment for a period of ten years from the effective date of this order. Each such

notice shall include the respondents' new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondsent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

Part VIII

It is further ordered that the respondents shall, within sixty (60) days after service upon them of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

It is so ordered.

By the Commission. Commissioners Pertschuk and Bailey concurred in part and dissented in part.

Issued: March 23, 1984.

Emily H. Rock,

Secretary.

Commissioner Pertschuk, Concurring in Part and Dissenting in Part

I concur in the majority's findings that respondents violated Section 5. However, I disagree entirely with the legal analysis in the majority opinion and I dissent from the denial of complaint counsel's appeal on the issue of the order's record retention requirements.

Respondents' misrepresentations in this case were unambiguous and undoubtedly material. To put it simply, respondents grossly exaggerated the sole performance feature of their product, the Ball-Matic Gas Save Valve. Normally, there would be little more to say. However, this is the first deception case the Commission has decided since the announcement of the dubious Policy Statement on Deception of October 14, 1983. Since the validity of the bare majority vote on the Statement is open to question, apparently the new majority feels compelled to establish the Statement's legitimacy now by jumping this case through the hoops of its analytical framework for deception cases, regardless of how unhelpful that exercise may be.

Under the guise of making the law more "clear and understandable," the majority has actually raised the evidentiary threshold for deception cases. In this unusually simple case, the majority's approach does not affect the outcome. One has little difficulty in concluding that consumers reasonably relied on respondents' claims and suffered significant monetary loss as a direct result. However, in other cases the harm from the majority's legal analysis will be palpable and painful.

The majority opinion acknowledges that the Commission need not find actual deception to conclude that Section 5 has been violated. Furthermore, it admits that the courts have traditionally and recently recognized this fact by requiring the Commission to find only that an act or practice has the "tendency or capacity" to mislead consumers. So far, so good. However, three commissioners have found it necessary to improve on language long understood by the courts and previous commissioners, by substituting the word "likely" for "tendency or capacity." "Likely to mislead," they insist, expresses more clearly the notion that actual deception need *not* be found!

The avowed intentions of the majority are admirable, but the *results* of their effort to "fix" an unbroken legal standard are not. Their choice of language is unfortunate, because the word "likely" suggests that some particular degree of likelihood of actual deception must be found. Therefore, it may create the impression, intentionally or not, that the burden of proof is higher than it has always been under the traditional "tendency or capacity" standard.

The new deception analysis has a more serious effect that is clearly not unintentional. That is to withdraw the protection of Section 5 from consumers who do not act "reasonably."

There is, of course, no support in the caselaw or academic literature for the proposition that deception cannot occur unless reasonable consumers are misled. In a few deceptive advertising cases in which the Commission has determined that Section 5 was violated, it has premised its determination on a finding that consumers could "reasonably" interpret the advertiser's claims in a certain way.[1] Such findings do not mean that consumers must be "reasonable" in order to enjoy the protection of Section 5, just as findings that the "clear import"[2] of an advertisement was false do not mean that ads violate Section 5 only if they "clearly" express a falsity. A finding that consumers could reasonably be misled is a sufficient, but not necessary, way to establish deception.[3] neither the Commission nor the courts have ever before mandated this method of analysis.

One recent Commission opinion suggests that the Commission must judge ads according to their impression on "reasonable members of the public."[4] However, the correct interpretation of that statement is that the Commission cannot, when an ad is directed to the general public, hold the advertiser to an outlandish interpretation.[5]

In other opinions relied on by the majority, the Commission has stated that its interpretation of ad claims must

[1] *E.g., American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 386 *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers Co.*, —— F.T.C. ——, slip op. at 7, 11 (Docket No. 8917, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

[2] *E.g., American Home Products*, 98 F.T.C. at 367. Similarly, a finding that a company intended to create a certain impression among consumers (*Id.* at 368), does not imply that the Commission must find intentional misconduct to rule that Section 5 has been violated.

[3] The *American Home Products* case illustrates several ways in which the Commission can reach the conclusion that an advertiser's claims are deceptive. In finding that the company falsely claimed that Anacin contains a pain reliever other than aspirin, the Commission concluded that this was the "clear import" of some ads. *Id.* at 367. As to other ads, it concluded that consumers would "reasonably have understood" such a claim to have been made. *Id.* at 367, 371–72. A third analysis was applied in finding that claims for tension relief had been made. That conclusion was based in large part on expert testimony and a copy test of one advertisement showing that 22% of viewers identified that claim as having been made. *Id.* at 393–94. (The Commission's analysis of tension relief claims was similar in *Bristol-Myers*, slip op. at 44–55.)

[4] *Bristol-Myers*, slip op. at 4–5 ("[T]he Commission may not inject novel meanings into ads and then strike them down as unsupported; ads must be judged by the impression they make on reasonable members of the public.")

[5] This statement of the law is supported by the cases cited in *Bristol-Myers* as authority for the language quoted in note 4. The first case cited is *Ward Laboratories, Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960). There the court upheld the Commission's decision to protect "the average male, of which there are millions, who because of masculine vanity will grasp at any straw [to] save his hair . . . ." The court went on to declare that advertisements should be judged by their effect on "the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words." *Id.* The second case cited is *International Parts Corp.* v. *FTC*, 133 F.2d 883, 886 (7th Cir. 1943), in which the court vacated the Commission's order forbidding the company from claiming that the finish on its mufflers permanently prevented rust or corrosion. The court concluded that the company had not claimed that its finish prevented rust permanently, finding that the common meaning of the word "prevents" carries no connotation of permanency. The law of this case is that a company "will be presumed to have used [a] word in its ordinary and commonly accepted understanding, in the absence of any showing to the contrary." The other cited case is *Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964), which provides that the Commission will not interpret an ad as it would be unreasonably misunderstood by only an "insignificant and unrepresentative" segment of consumers.

be "reasonable." [6] Such cases simply convey the Commissio's recognition that the *Commission* must act reasonably (*i.e.*, not in an arbitrary or capricious fashion), in determining, in light of the evidence before it, whether an ad could mislead a substantial number of consumers.[7] In none of those cases did the Commission speak of "reasonable consumers."

In this particular case, there is no real dispute as to the meaning of respondents' representations about their product. Further, it is clear that consumers would be "reasonable" in accepting the scientific-sounding, plausible-seeming explanations or respondents as to how (and how well) the product performed. However, this is an easy case, and the majority opinion offers no guidance as to how more difficult matters will be decided.

How will the Commission judge the conduct of consumers who succumb to sales pitches for worthless or grossly over-valued investments? Do "reasonable consumers" buy diamonds or real estate, sight unseen, from total strangers? Is a consumer "acting reasonably" when he or she falls for a hard-sell telephone solicitation to buy "valuable" oil or gas leases from an unknown corporation? Can a consumer "reasonably" rely on oral promises that are expressely repudiated in a written sales contract?

The sad fact is that a small segment of our society makes its livelihood preying upon consumers who are very trusting and unsophisticated. Others specialize in weakening the defenses of especially vulnerable, but normally cautious, consumers. Through skillful exploitation of such common desires as the wish to get rich quick or to provide some measure of security for one's old age, professional con men can prompt conduct that many of their victims will readily admit—in hindsight—is patently unreasonable.

Of course, what strikes me as "unreasonable" consumer behavior may not seem so to other commissioners. The very subjective nature of the "reasonable consumer" standard is cause for concern. How can consumer conduct be measured for reasonableness? I know of no test for it, and I am fearful of the *ad hoc* determinations that will be made in the future.

Consumers are much better protected by the traditional test for deception, which requires only that a substantial number of consumers could be misled.[8] This standard does not put the Commission in the position of passing judgment on the credulity, impetuousness, or inattentiveness of the victims of alleged misconduct. Furthermore, the traditional standard allows the Commission to recognize that sellers frequently design their promotional efforts to appeal to specific groups of consumers, even when their conduct is ostensibly directed to the public at large. In such cases, the Commission need only find that a substantial number of consumers in the target group could be misled,[9] considering the sophistication of the persons in that group,[10] their mental state,[11] and their mental capabilities.[12] Thus, a fraudulent scheme may yield relatively few victims in absolute numbers but nevertheless satisfy the legal standard for deception, because the pool of potential buyers is small. The caselaw has made it clear that Section 5 protects unthinking and credulous consumers as well as those who act "reasonably" in all their commercial transactions.[13]

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[6] *Sears, Roebuck and Co.*, 95 F.T.C. 406, 511 (1980), *aff'd*, 676 R. 2d 385 (9th Cir. 1982) (Commission overturned the administrative law judge's interpretation of some ads, noting the rule that ads must be "reasonably subject to some interpretation that is false" in order for deception to be found); *Pfizer, Inc.*, 81 F.T.C. 23, 59 (1972) (Commission affirmed the law judge's dismissal of the complaint because alleged implied representations could not "reasonably be found" in the ads). *See also, National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Dir.), *cert. denied*, 419 U.S. 993 (1974) (Commission overturned the administrative law judge's holding that an implied representation that the advertiser had substantiation for its claims could not reasonably be found).

[7] The Commission explained this obligation in *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982) [citations omitted]: It is settled that the Commission has sufficient expertise to determine an advertisement's meaning—express and implied—without necessarily resorting to evidence of consumer perceptions. This is not to say that an advertisement is susceptible to every reading that it may technically support, no matter how tenuous it might be; rather, the interpretation must be reasonable in light of the claims made in the advertisement, taken as a whole. In many cases, the Commission has refused to accept particular interpretations urged by complaint council because the advertisements themselves did not imply them and no extrinsic evidence had been offered to prove their apprehension by some reasonably significant number of consumers.

[8] *Statement of Basis and Purpose for the Funeral Industry Practices Rule*, 47 FR 42260, 42274 (1982) ("A statement is deceptive under Section 5 of the FTC Act if it actually misleads consumers, or has the tendency or capacity to deceive a substantial segment of the purchasing public in some material respect."); *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982) ("In many cases, the Commission has refused to accept particular interpretations urged by complaint counsel because the advertisements themselves did not imply them and no extrinsic evidence had been offered to prove their apprehension by some reasonably significant number of consumers."); *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 649 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir. 1980) (Section 5 is violated if "substantial numbers of the public are likely to make purchasing decisions based on false beliefs"); *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975) ("we agree that a substantial number of consumers surveyed (probably somewhere between 14 percent and 33 percent) understood Dry Ban to be 'dry'"); *Statement of Basis and Purpose for the Cigarette Rule*, 29 FR 8325, 8350 (1964) ("[T]he test of unlawful deception under Section 5 is whether the advertisement in question is likely to deceive a substantial segment of the purchasing public, or of that part of the purchasing public to whom the representation is directed. . . ."); *see also, Firestone Tire & Rubber Co.* v. *FTC*, 481 F.2d 246, 249 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973); *Travel King, Inc.*, 86 F.T.C. 715, 759–60 (1975) (initial decision); *Benrus Watch Co., Inc.* v. *FTC*, 352 F.2d 313, 319–20 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966).

[9] *Statement of Basis and Purpose for the Cigarette Rule* (see quotation *supra* note 8); *Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964) ("If . . . advertising is aimed at a specially susceptible group of people (*e.g.*, children), its truthfulness must be measured by the impact it will make on them, not others to whom it is not primarily directed."); *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 383 note 37 (1977) (dictum) ("The determination whether an advertisement [for legal services] is misleading requires consideration of the legal sophistication of its audience.")

[10] *Horizon Corp.*, 97 F.T.C. 464, 810 note 13 (1981); *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 628 (1978), *aff'd* 679 F.2d 905 (D.C. Cir. 1980); *Toshof*, 74 F.T.C. 1361, 1401 (1968), *aff'd*, 437 F.2d 707 (D.C. Cir. 1970).

[11] *Travel King, Inc.*, 86 F.T.C. 715, 757, 759–60 (1975) (initial decision); *Porter & Dietsch, Inc.*, 90 F.T.C. 770, 865 (1977), *aff'd as modified*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Stauffer Laboratories, Inc.* v. *FTC*, 343 F.2d 75, 83 (9th Cir. 1965); *Ward Laboratories Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.) *cert. denied*, 364 U.S. 827 (1960); *Savitch*, 50 F.T.C. 828, 834 (1954), *aff'd*, 218 F.2d 817 (2d Cir. 1955).

[12] *Cigarette Statement*, *supra* note 8, 29 FR at 8358; *Ideal Toy Co.*, 64 F.T.C. 297, 310 (1964) (initial decision) ("False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue."); *ITT Continental Baking Co.*, 83 F.T.C. 865 (1973), *modified*, 83 F.T.C. 1105 (1973), *aff'd*, 532 F.2d 207 (2d Cir. 1976); *Avalon Indus., Inc.*, 83 F.T.C. 1728, 1750 (1974); *Stupell Originals Inc.*, 67 F.T.C. 173, 186–87 (1965); Notice of Proposed Trade Regulation Rulemaking and Public Hearing on Children's Advertising, 43 FR 17967, 17969 (1978).

[13] *FTC* v. *Standard Education Society*, 302 U.S. 112, 116 (1937) ("Laws are made to protect the trusting as well as the suspicious."); *Doherty, Clifford, Steers & Shenfield, Inc.* v. *FTC*, 392 F.2d 921, 926 (6th Cir. 1968) ("the Commission is bound to protect the public in general, the unsuspecting as well as the skeptical"); *Aronberg* v. *FTC*, 132 F.2d 165, 167 (7th Cir. 1942) ("The law is not made for experts but to protect the public—that vast multitude which includes the ignorent, the unthinking, and the credulous. . . ."); *Feil* v. *FTC*, 285 F.2d 879, 887 (9th Cir. 1960); *Gold Bullion International, Ltd.*, 92 F.T.C. 196, 221 (1978), *modified*, 92 F.T.C. 667 (1978); *Niresk Indus., Inc.* v. *FTC*, 278 F.2d 337, 342 (7th Cir.), *cert. denied*, 364 U.S. 883 (1960) ("[T]he Commission's determination is not restricted to a consideration of what impression an expert or careful reader would draw from the advertisements."); *Indep. Directory Corp.* v. *FTC*, 188 F.2d 468, 470 (2d Cir. 1951) ("It was reasonably to be expected that a busy businessman might . . . [be misled]. Such a misconception is more probable in the case of the careless businessman who is also entitled to protection from deception.")

The third element of deception is materiality. As the Supreme Court has explained, Section 5 prohibits the misrepresentation of "any fact which would constitute a material factor in a purchaser's decision whether to buy.[14] Heretofore, any fact that is important to consumers has been considered material, regardless of whether consumer choices would actually turn on that fact. As the Commission has previously said, "[t]he fact that consumers were not harmed because they would have purchased the product anyway * * * is not relevant." [15] The Commission has not required a showing of reliance or injury to establish deception.[16]

The majority opinion in this case, however, suggests somewhat ambiguously that a misrepresentation is not material unless it is "likely to affect" consumers' conduct and "[c]onsumers thus are likely to suffer injury." [17] Similarly, the October 14, 1983, Policy Statement on Deception states: "a finding of materiality is also a finding that injury is likely to exist * * *. Injury exists if consumers would have chosen differently but for the deception." [18]

Respondents here misrepresented the sole performance feature of their product, and it is reasonable to assume in this case that their misrepresentations caused consumers to buy the product and suffer monetary loss. However, this is an unusually simple case. What if this case had concerned misrepresentations about a product with many important performance and design features, such as an automobile? If respondents had, for example, made a false fuel efficiency claim for an automobile, would complaint counsel have been required to show that that particular claim would have "tipped the scales" for consumers in their weighing of the many features of automobiles that are important to them? Such a requirement of proof would be exceedingly difficult, if not impossible, to meet in that and many other cases. Indeed, it could effectively preclude the Commission from challenging misrepresentations about complex products.

If the majority commissioners intend to require proof of actual or likely reliance on the misrepresentations of respondents in future cases, they have changed the meaning of materiality and made it more difficult to establish violations of Section 5. In any event, they have certainly not made the standard for deception more clear and understandable.

Finally, although I support the order adopted by the majority, I would not limit the recordkeeping requirements of Part IV to the promotion of fuel saving products. Part III of the order governs the use of endorsements for any product as well as any representations concerning "energy savings or energy consumption characteristics of any product." If this part of the order is justified, and I believe it is, then respondents should be required to maintain records that evidence compliance with it.

Issued: March 23, 1984.

Commissioner Patricia P. Bailey Concurring in the Result in Part and Dissenting in Part

March 23, 1984.

The issues pertaining to liability in this case are not complicated. Indeed, the application of established law to the facts in *Cliffdale* can lead to only one conclusion: These respondents have violated Section 5 of the Federal Trade Commission Act in a number of ways, as set forth in this opinion, in their marketing of the Ball-Matic Gas Save Valve. Thus, I concur fully in the findings of liability. However, I must disassociate myself from the confusing and wholly unorthodox reformulation of the traditional test for finding deception, which has been announced in this opinion as the relevant legal standard.[1] Additionally, I dissent from the Commission's failure to adopt a more expensive order provision concerning the retention of business records.

Legal Standard for Deception

This is an uncomplicated case involving a number of advertising claims, which are clearly false and deceptive, that could have been addressed with swift and sure justice under existing law. Unfortunately, a majority of the Commission has chosen to use the case as a vehicle to set forth a new legal standard which has little to do with the case and much to do with an ill-advised undertaking to rewrite the law of deception.

Applying a shorthand variant of the oft-repeated standard for deception, Administrative Law Judge Miles J. Brown concluded in the Initial Decision that "any representation that has a tendency or capacity to mislead or deceive a prospective purchaser is an unfair or deceptive practice which violates the Federal Trade Commission Act." [2] The Commission's opinion dismisses this articulation as being "circular and therefore inadequate to provide guidance on how a deceptive claim should be analyzed." [3] In its place is substituted a new formulation, promoted as "a clear and understandable standard", which states that the Commission will find deception where "first, there is a representation, omission, or practice that is likely to mislead, second, consumers acting reasonably under the circumstances, and third, the representation, omission or practice is material." [4]

Notwithstanding assertions to the contrary, none of these three elements, as defined in the opinion, (or for that matter in the appended Policy Statement) correctly states the factors expressly relied upon in prior Commission cases and by reviewing courts to determine whether a deceptive representation or practice has occurred. Rather, a complete and accurate statement of the elements of deception has typically and traditionally included the three-part formula that an act or practice have the tendency or capacity to mislead a substantial number of consumers in a material way.[5] While the two statements may at first glance seem semantically similar, the fact is that this reformulation departs from current law in several significant respects, all of which have the potential to heighten the Commission's evidentiary burden considerably and thereby limit the time-honored reach of its deception authority. For this reason, I dissent from the legal

[14] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 386 (1965).

[15] *Firestone Tire & Rubber Co.*, 81 F.T.C. 398, 451 (1972), *aff'd.*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973).

[16] *Id. See also, Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978); *Travel King, Inc.*, 86 F.T.C. 715, 774 (1975).

[17] Slip op. at 9.

[18] Deception Statement at 18.

[1] In May 1983, the Committee on Energy and Commerce of the U.S. House of Representatives asked the Federal Trade Commission to prepare and submit "an analysis of the law of its deception jurisdiction as presently applied by the Commission and interpreted in case law." In response to that request, on October 21, 1983, Chairman Miller forwarded the appended "Policy Statement on Deception" to the Honorable John D. Dingell, Chairman of the Committee. I dissented from the issuance of that statement. This case represents the first public pronouncement that the principles set forth in that policy statement are intended to be not just current agency enforcement policy, but also the legal standard for future Commission deception cases.

[2] ID 35, citing *Chrysler Corp.* v. *FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977); *Charles of the Ritz Distrib. Corp.* v. *FTC*, 143 F.2d 676, 679–80 (2d Cir. 1944).

[3] Slip op. at 7.

[4] *Id.*

[5] An early version of this standard appeared in a 1919 Commission decision. *See Iron Clad Tire*, 1 F.T.C. 380, 385 (1919). The standard was affirmed by the Seventh Circuit the same year. *See Sears, Roebuck & Co.* v. *FTC*, 258 F. 307, 311 (7th Cir. 1919). Application of the tendency or capacity standard has continued regularly up to the present. *See American Home Products Corp.* v. *FTC*, 695 F.2d 681, 686–87 (3d Cir. 1982).

standard employed in the opinion and believe it is important to examine each of these new elements separately.

The majority's first criterion for deception is that there be a claim, omission or practice that is "likely to mislead" consumers. It is true that the courts have occasionally used this or similar phrasing, such as "the likelihood or propensity" of deception, interchangeably with tendency or capacity.[6] I certainly do not object to and indeed am sympathetic with such usage where the primary goal appears to be to avoid the repetitious use of standard phraseology in the discussion of well-grounded legal prinicples. Here, however, the majority makes unmistakable its intent to *exchange* the phrase tendency or capacity for the term likely, with only the brief explanation that it is meant to convey an understanding that "actual" deception need not be shown. As that was never in doubt, it does not explain the use of the term likely generally, and it certainly does not make clear how its use will be more instructive in assessing deception.

Unfortunately, neither the opinion nor the appended Policy Statement offers additional explanation for this stated preference, leaving us all to guess as to any real or intended distinction from the "tendency or capacity" analysis. A standard Webster's definition of likely, "having a high probability of occurring or being true", suggests, however, that the purposeful substitution of this term for tendency or capacity may well be intended to raise, or may be construed so as to raise, the burden of proof the Commission must meet in demonstrating that deception has occurred. A careful reading of the opinion and the Policy Statement lends support to this inference; recurring references are made to the need for extrinsic evidence of consumer interpretations in many instances where it is not presently required, suggesting a need for the Commission to establish a higher level of probability that deception may have occurred in any particular instance.

Although the Commission has often admitted and relied in the past upon evidence about the effect of an act or practice on consumers, such a showing has not been required by reviewing courts, which have regularly affirmed that such matters are committed to the discretion of the FTC.[7] Thus, use of the term "likely" here may be fairly perceived to be at least a partial retreat from the Commission's traditional position that it may on the basis of its own expertise determine what representations a seller has made to the public.

The second requirement is that an act or practice be likely to mislead consumers "acting reasonably under the circumstances." Of the three newly introduced elements, I believe this is on its face the most divorced from prior precedent and also the most likely to produce troubling results.

While the precise wording has varied a bit from decision to decision, the concept underlying the existing analytical construction has remained constant: a claim or practice must deceive a "substantial number" of consumers in order to trigger a finding of deception.[8] Importantly, this standard affords protection to consumers and business merchants alike. Thus, it is well recognized that, if a claim is directed at a particular audience, the test is whether it could deceive a significant portion of that group.[9] At the same time, while it is clear that a practice need not mislead all or even a majority of consumers, the Commission will not base findings of law violations on the idiosyncratic interpretations or the unreasonable misunderstandings of an insignificant and unrepresentative segment of a seller's audience.[10]

The substantial numbers test is not intended to lead to the strict quantification of the number of consumers who have been misled by a claim or practice and has, therefore, never required the introduction of external evidence concerning such numbers. Rather the concept provides the Commission with a flexible sliding scale upon which it can typically infer whether or not a significant number of consumers could be deceived from its own examination of the conduct at hand and surrounding circumstances,[11] often based on general information concerning the size and composition of a specific target audience.[12] Even when extrinsic evidence is available, the Commission does not rely exclusively on such documentation in reaching its decision.[13]

Despite the forty-odd-year application by the Commission and the courts of a substantial numbers formula, the opinion injects this alternative precept and unknown quantity, the "reasonable consumer," into the law of deception. Again, there is little helpful explanation as to why.

While the opinion states that the concept of a "consumer acting reasonably in the circumstances" is not new, and the Policy Statement includes citations to recent Commission cases which employ the term "reasonable", reliance on prior FTC decisions for that proposition is misplaced. For example, in several recent deceptive advertising cases, the Commission has based a finding of liability under Section 5 on its determination that consumers could "reasonably interpret" the advertiser's

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[6] *See, e.g., Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976); *Montgomery Ward & Co. v. FTC*, 379 F.2d 686, 670 (7th Cir. 1967); *Feil v. FTC*, 285 F.2d 879, 886, 896 (9th Cir. 1960).

[7] *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965) ("Nor was it necessary for the Commission to conduct a survey of the viewing public before it could determine that the commercials had a tendency to mislead."). *See also American Home Products Corp. v. FTC*, 695 F.2d 681, 687–88 & n.10 (3d Cir. 1982); *Resort Car Rental System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied sub nom. MacKenzie v. United States*, 423 U.S. 827 (1975) (Commission could have reached conclusions regarding deceptive nature of ads without consumer witnesses "whose testimony merely supported the inferences which can logically be drawn by scrutinizing the advertising alone"); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 890 (6th Cir. 1967) (the Commission need not "take a random sample to determine the meaning and impact of the advertisements"); *Carter Products, Inc. v. FTC*, 323 F.3d 523, 528 (5th Cir. 1963); *Exposition Press, Inc. v. FTC*, 295 F.2d 869, 872 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962) ("Actual consumer testimony is in fact not needed to support an inference of deceptiveness by the Commission."); *Zenith Radio Corp. v. FTC*, 143 F.2d 29, 31 (7th Cir. 1944) ("The Cmmission was not required to sample public opinion to determine what the petitioner was representing to the public."); *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982); *National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974).

[8] This element of the deception test has been variously described as requiring: a "substantial segment," *see Statement of Basis and Purpose for the Funeral Industry Practices Rule*, 47 Fed. Reg. 42,260, 42,274 (1982); *Statement of Basis and Purpose for the Cigarette Rule*, 29 Fed. Reg. 8325, 8350 (1964); a "substantial percentage," *see Benrus Watch Co., Inc. v. FTC*, 352 F. 2d 313, 319–20 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); "substantial numbers," *see Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 649 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir 1980); *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975); *Travel King, Inc.*, 86 F.T.C. 715, 759 (1975); or "some reasonably significant number," *see The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[9] *Cigarette Statement, supra* note 8, 29 Fed. Reg. at 8350. *See Heinz W. Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964). *See also Bates v. State Bar of Arizona*, 433 U.S. 350, 383 n.37 (1977).

[10] *Heinz W. Kirchner*, 63 F.T.C. 1282 (1963), *aff'd*, 377 F.2d 751 (9th Cir. 1964). *See also The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[11] *See, e.g., The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[12] *See, e.g., Travel King, Inc.*, 86 F.T.C. 715, 759–60 (1975) ("Many thousands of ill persons for all over the world" constituted "substantial numbers" in finding deception where both physical harm (from the interruption or proper medical care and the rigors of international travel) and substantial loss of time and money resulted from trip to the Philippines for "psychic surgery.")

[13] *See, e.g., American Home Products Corp.*, 98 F.T.C. 136, 393–94 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers Co.*,—F.T.C.—, slip op. at 44–45 (Docket No. 8917, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

claims in a particular fashion.[14] While this language describes one approach among many available to the Commission in the exercise of its authority to determine whether or not a representation is deceptive, it by no means established a legal requirement that consumers act reasonably or that the Commission must examine consumer behavior in those cases in which it was used, nor was it intended to circumscribe, much less preclude, the continued use of other long-accepted methods for finding deception in Commission cases generally.[15] I believe other citations to recent Commission matters are equally inapposite.[16]

The consequences of this hastily constructed house of cards, devoid as it is of any support in Commission precedent, accompanying explanation, or meaningful application in this particular case, may be far reaching. Practically speaking, one obvious result may be to complicate and delay Commission trial proceedings. If the reasonableness of consumer interpretations become a litigable issue—and there is every reason to believe that future respondents' counsel will assure that it will be under the new standard—survey evidence or expert testimony regarding consumer attitudes and actions may be mandated in even the simplest Commission cases.[17] The introduction of such evidence will, in turn, raise difficult questions about related evidentiary issues, such as whether new discovery and cross-examination rights concerning survey methodology and results have been created.[18] It does not take a seer to predict that the real beneficiaries of these procedural complications and the ensuing delay will be FTC respondents and their counsel, and not the Commission or the public.

Another unfortunate but foreseeable consequence of the introduction of a reasonable consumer standard is to cast the courts adrift in their efforts to understand and apply to Commission cases what is clearly a departure from prior law. What, for example, are the elements of a reasonable consumer test? Without more, the courts may logically turn for guidance to certain common law principles, such as the standard of "ordinary prudence or care" attributable to the hypothetical "reasonable man" in tort law.[19] Although principles such as these are useful tools to establish objective standards for judging individual conduct which may result in physical or emotional harm to others, comparable concepts have no place in the examination of *consumer* behavior in the marketplace, as the Commission has made clear in the past.[20] Thus, while the Commission has indicated that it will not subject sellers to every interpretation made by an "insubstantial and unrepresentative segment" of the seller's audience, it has at the same time faithfully adhered to the enduring proposition that consumers are entitled to take commercial representations at face value and need not mistrust them.[21] I believe the imposition of a "reasonable consumer" test as an element of the legal standard for deception may seriously jeopardize this guiding principle of deception law, which has permitted and encouraged the Commission to spread its protective mantle over the uninformed and credulous,[22] those with understandable but often unreasonable hopes,[23] those with limited reasoning abilities, such as children,[24] and even "average" consumers whose guard may be down or who may behave somewhat carelessly in the face of deceptive conduct.[25]

Although the Policy Statement promises to continue the traditional protections afforded such groups, a reasonable consumer standard, like the rejected doctrine of caveat emptor, is analytically unsuited for such purposes. By definition the term reasonable means "possessing sound judgment." Thus, while the Commission may logically continue to consider "reasonable consumer interpretations" in instances where it may be one acceptable

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[14] *See, e.g., American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 386 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers*, — F.T.C. —, slip op. at 7, 11 (Docket No. 8917, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

[15] For a description of several different approaches used by the Commission to determine whether an advertiser's claims have a tendency to deceive, see *American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 393–94 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982).

[16] For example, in *National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974), the use of the term "reasonable" refers to the requirement that the *Commission* act in a reasonable (as opposed to arbitrary or capricious) way in determining that consumers could be misled by a claim or practice. For a general explanation of this obligation, see *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[17] Even in the instant matter, a particularly uncomplicated Commission case, the majority specifically notes that, while it is able to "interpret the claims as a reasonable consumer would have", evidence as to how consumers actually interpreted respondents' ads "would have been helpful." Slip op. at 12.

[18] *See* Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 Harv. L. Rev. 661, 679 (1977).

[19] *See, e.g.*, Restatement (Second) of Torts sections 281–328D (1965).

[20] *Exposition Press, Inc.* v. *FTC*, 295 F.2d 869 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962) ("[W]e think it plain that a deviation of one digit in the date on a coin is not likely to distinguish it sufficiently from the original to alert an 'unsuspecting person of ordinary observation and care' whom the criminal counterfeit law protects, let alone the 'ignorant, unthinking and credulous' who are not excluded from the protection of civil consumer law.").

The Commission has, however, applied an analogous concept to determine whether a *seller* possessed and relied upon a "reasonable basis" for believing a representation to be true. *See National Dynamics Corp.*, 82 F.T.C. 488, 553, 557 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974) (finding was based on whether the advertiser "acted upon information which would satisfy a reasonably prudent businessman" that the representation is true and that he acted in "good faith"). *See also Pfizer Inc.*, 81 F.T.C. 23, 64 (1972). While the Commission has not applied this standard often, it rightfully reflects, I think, society's general determination that the seller assumes certain risks and responsibilities in making product offerings—burdens which should not be shifted unfairly to consumers.

[21] *See FTC* v. *Standard Education Society*, 302 U.S. 112, 116 (1937).

[22] *See, e.g., Aronberg* v. *FTC*, 132 F.2d 165, 167 (7th Cir. 1942) ("The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking, and the credulous. . . ."); *Feil* v. *FTC*, 285 F.2d 879, 887 (9th Cir. 1960); *Gold Bullion International, Ltd.*, 92 F.T.C. 196, 221 (1978), *modified*, 92 F.T.C. 667 (1978).

[23] *See, e.g., Travel King, Inc.*, 86 F.T.C. 715, 757, 759–60 (1975); *Porter & Dietsch, Inc.*, 80 F.T.C. 770, 865 (1977), *aff'd as modified*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Stauffer Laboratories, Inc.* v. *FTC*, 343 F.2d 75, 83 (9th Cir. 1965); *Ward Laboratories, Inc.*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960).

[24] *See, e.g., Cigarette Statement, supra* note 8, 29 Fed. Reg. at 8358 (quoting *FTC* v. *R.F. Keppel & Bro., Inc.*, 291 U.S. 304, 313 (1934)). *See also Ideal Toy Co.*, 64 F.T.C. 297, 310 (1964) (initial decision); *ITT Continental Baking Co.*, 83 F.T.C. 865, *modified*, 83 F.T.C. 1105 (1973), *aff'd*, 532 F.2d 207 (2d Cir. 1976); *Avalon Indus., Inc.*, 83 F.T.C. 1728, 1750 (1974); *Stupell Originals, Inc.*, 67 F.T.C. 173, 186–87 (1965); *Notice of Proposed Trade Regulation Rulemaking and Public Hearing on Children's Advertising*, 43 Fed. Reg. 17,967, 17,969 (1978).

[25] *See, e.g., Independent Directory Corp.* v. *FTC*, 188 F.2d 468, 470 (2d Cir. 1951) ("It was reasonably to be expected that a busy business man might . . . [be misled]. Such a misconception is more probable in the case of the careless business man who is also entitled to protection from deception."); *American Home Products Corp.* v. *FTC*, 695 F.2d 681, 689 (3d Cir. 1982) ("If accepted, AHP's position [on the meaning of its advertisements] might well preclude the Commission from taking action against advertisements that, when read with scrupulous care by vigilant and literal-minded consumers, could be seen to be making true claims."); *Colgate-Palmolive Co.* v. *FTC*, 310 F.2d 89, 91 (1st Cir. 1962), *rev'd on other grounds*, 380 U.S. 374, 391–92 (1965) ("It should be obvious by now to anyone that advertisements are not judged by scholarly dissection in a college classroom."); *Ward Laboratories, Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960) ("[A]dvertisements are not to be judged by their effect upon the scientific or legal mind which will dissect and analyze each phrase but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words."); *Stupell Originals, Inc.*, 67 F.T.C. 173, 186 (1965) ("[W]hile the risk of injury [from respondent's product] . . . may be obvious to the person who pauses to consider such possibility, we seriously doubt that the ordinary purchaser would dwell on this eventuality.")

approach, such as in cases involving major national advertising campaigns aimed at mass audiences, traditional Commission fraud cases, focusing as they generally do on seller exploitation of *unreasonable* consumer judgments and actions, will never lend themselves in an appropriate way to such an analysis. Unlike the "substantial numbers" test, which by design encompasses both types of cases by focusing on the likely reactions of a seller's intended audience—whatever human frailties the group may exhibit—to a marketing message, the majority's approach will, I believe, require much analytical sleight of hand if the protections long promised and provided by the FTC to vulnerable consumers is to continue.

The third and last element of the new deception triumvirate is a requirement that the representation, practice, or omission be "material". Of the new requirements, this has the potential to be the wolf in sheep's clothing. The Commission has long held that a challenged act or practice must be misleading in a material respect in order to be found deceptive. Additionally, the opinion accurately states that materiality has been generally defined to include any sort of consumer preference which is likely to affect the purchasing decision [26] or post-purchase use of the product.[27] And, perhaps most significantly, the opinion carefully and correctly disavows any requirement of a specific finding that actual injury has occurred.[28]

Just when all appears to be going well, however, the opinion (and at greater length the Policy Statement) introduces a series of new concepts which appear to qualify standard principles of materiality in a restrictive fashion. At one point the opinion seems to equate materiality with the actual effects of claims or practices on consumer conduct,[29] and the Policy Statement expressly states that "injury and materiality are different names for the same concept" and that deception will be found where an act or practice "misleads * * * to the consumer's detriment." [30] (Detriment is, of course, legally defined as injury.) The Policy Statement also notes that injury exists if consumers would have chosen differently "but for" the misleading act or practice, suggesting that reliance and causation are elements of materiality.[31]

While I don't pretend to understand the full import of these statements, they certainly imply the possible imposition in at least some cases of new evidentiary requirements that are contrary to current law. Because Section 5 protects consumer preferences generally, including subjective preferences, materiality can be found without reference to objective injury or "detriment."[32] Moreover, because purchasers may be influenced by a combination or variety of factors, it may be virtually impossible to establish that a particular misrepresentation caused consumers to choose differently, much less that they were "injured" in some respect by the selection made. Hence, under the law, "(t)he fact that consumers were not harmed because they would have purchased the product anyway * * * is not relevant."[33]

Opinion and Policy Statement conclusions that injury and materiality are synonymous, that causation and reliance must be shown, or even that the likelihood of consumer detriment must be demonstrated in every case do not square with these accepted understandings of materiality. Like the other elements of the new deception standard, the effects of such requirements may well be to raise the burden of proof regarding materiality generally in FTC cases, while at the same time serioulsy jeopardizing more complicated cases in which specific consumer harm is not easily demonstrated. I am particularly concerned that a restrictive materiality test may serve to undermine the Commission's ad substantiation doctrine. If actual injury or even the likelihood of harm must be shown in all events, the Commission may, in addition to demonstrating a lack of substantiation, be forced to prove falsity in many advertising cases where it is not presently required, in order to establish the necessary link to concrete consumer detriment.

The effort to apply the new deception standard to the instant case is, I believe, a particularly confusing and profitless effort. As I noted at the outset, this case is unusually clearcut, involving as it does a variety of false performance claims, the meaning and import of which can be readily discerned from an examination of respondents' advertisements and the record generally. Nevertheless, the opinion strains valiantly at several junctures to introduce specific findings concerning the "reasonableness" of consumer behavior and the presence of materiality or "detriment" in *Cliffdale*. Again, I have no quarrel with the conclusions reached in this case, but analyzing it by applying these new elements is a wholly unnecessary exercise which demonstrates, I fear, the serious evidentiary difficulties and the exercise of even greater analytical gymnastics that will be necessary in future, more complicated Commission cases.

For the most part, however, the opinion concedes that this case precludes application of this purported new legal standard in any meaningful fashion, and, as a result, the lengthy discussion of it in the opinion and appended Policy Statement is a largely academic exercise. Rather than clarifying the law of deception, the opinion attempts to write new law which is destined to confound its readers. If applied literally, the new three part definition could narrow the Commission's authority to prosecute a range of dishonest or deceptive conduct, while creating complications and uncertainty about the cases we do bring. In the absence of further practical guidance from the Commission and the courts, however, I believe interested parties would be well advised to adhere to tried and true legal strictures governing deception in the conduct of their commercial affairs.

Record Retention Requirements

I also dissent from the failure to require that the record keeping

[26] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 387 (1965); *American Home Products Corp.*, 98 F.T.C. 136, 368 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982).

[27] Care Labeling of Textile Wearing Apparel Rule, 16 C.F.R. § 423 (1983) (requiring the disclosure of proper instructions for the laundering and cleaning of clothing).

Also, in the last several years the Commission has alleged in numerous settled cases that information pertaining to the use or care of a product is material to consumers. *See, e.g., American Motors Corp.*, 100 F.T.C. 229 (1982) (safe use of Jeeps in on-pavement driving); *Chrysler Corp.*, 99 F.T.C. 347 (1982) (use and care information pertaining to the replacement of oil filters in vehicles). The Commission has also issued complaints in matters still in litigation alleging the materiality of use and care information. *Volkswagen of America*, Docket No. 9154 (complaint issued Apr. 1, 1981) (use and care of Volkswagen and Audi vehicles); *International Harvester Co.*, Docket No. 9147 (complaint issued Oct. 10, 1980) (use and care of tractors).

[28] *See Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965); *Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978).

[29] *See* Slip op. at 9.

[30] Deception Policy Statement at 19.

[31] *Id.*

[32] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965); *Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978) (quoting *Resort Car Rental System, Inc.* v. *FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied subl nom. Mackenzie* v. *United States*, 423 U.S. 827 (1975) ("Neither actual damage to the public nor actual deception need be shown.")).

[33] *Firestone Tire & Rubber Co.*, 81 F.T.C. 398, 451 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973). *See also Travel King, Inc.*, 86 F.T.C. 715, 774 (1975) ("it need not be shown that even one consumer actually relied on a particular false claim.")

provisions set forth in Part IV of the order be extended to apply to the marketing of all products, to the extent they are covered by the order. This omission seriously undermines the reach of Part III of the order which applies to non-fuel saving products marketed by Cliffdale.

Significantly, Part III expands order coverage to "all products" marketed by the respondents by requiring that they not misrepresent or misuse testimonials, misrepresent tests or survey results concerning energy savings or consumption, or use energy savings claims without a reasonable basis. In the circumstances of this case, this is a reasonable and justifiable order provision and the opinion does not contest the burden of imposing it on these respondents.

However, the majority has refused to include in the order parallel provisions requiring the retention of records with respect to the product coverage set forth in Part III. Unless records are retained, the Commission will be unable to monitor resondents' compliance with the order in an efficient or effective manner. As discussed by complaint counsel, under these circumstances a more expansive retention requirement is entirely consistent with the record keeping provisons contained in a number of recent Commission orders.[34] It is also consistent with the broad record keeping provisions of consent orders concerning other marketers of gas-saving products.[35]

[FR Doc. 84-9457 Filed 4-9-84; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule To Regulate Under the Consumer Product Safety Act Risks of Injury That May Be Associated With Baby Cribs Having Certain Hardware Failures or Omissions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is investigating the possibility that various items of hardware on baby cribs may break, become loose, detach, or otherwise fail to perform their intended function, or may have been omitted, so that risks of asphyxiation, concussion, laceration or other injury are created for children occupying such cribs. Should regulatory action become necessary to address any such risks (excluding any risk of injury associated with an item of crib hardware now subject to Commission regulations), the Commission will use the provisions of the Consumer Product Safety Act rather than those of the Federal Hazardous Substances Act. The Commission has determined that this transfer is in the public interest because, in the event the Commission finds that any such risks exist, public notification and remedial action can be accomplished more expeditiously under the CPSA than under the FHSA.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

A. Introduction

By issuing the rule below, the Commission has decided to regulate under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*)—rather than under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*)—risks of death and injury such as asphyxia, concussion, and laceration, which are associated with baby cribs having certain types of hardware failures or omissions [1] (referred to in this document as "crib hardware" and crib hardware risks"). The Commission proposed such a rule on December 27, 1983 (48 FR 56961) and received three comments on it.

Sections 30(d) of the CPSA (15 U.S.C. 2079(d)) governs the rule issued below. It provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the FHSA may be regulated under the CPSA only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under the CPSA.

The Commission has considered the applicable statutes, including section 30(d); the facts regarding possible crib hardware risks, including those associated with the malfunction, inadequacy and absence of crib hardware; the legal arguments and other points raised by the public commenters; and all other available information. The Commission has now determined that it is in the public interest to regulate under the CPSA, rather than the FHSA, the crib hardware risks included in the rule below.

B. Description of Risk

The risks of injury that the Commission is transferring to the CPSA *do not* include any of the ones already regulated under the FHSA:

1. Any risk of injury associated with release of locking or latching devices to secure dropside rails from a single action at a force of less than 4.5 kilograms (10 pounds);

2. Any risk of injury associated with any horizontal bar, ledge, projection from, or other surface attached to or forming a part of any end panel or side of a crib which is accessible to a child inside the crib and is capable of being used as a toehold, and which is located less than 51 centimeters (20 inches) above the mattress support in its lowest position when the side rail is in its highest position on a "full-size crib" (as that term is defined at 16 CFR 1508.1(a)), or less than 40.6 centimeters (16 inches) above the mattress support in its lowest adjustable position when the crib side is in its highest adjustable position on a "non-full-size crib" (as that term is defined in 16 CFR 1509.2); or

3. Any other risk of injury addressed by regulations applicable to cribs issued under the FHSA and published at 16 CFR 1500.18(a) (13) and (14), Part 1508, and Part 1509.

Several kinds of crib hardware failures or omissions create risks of asphyxiation, concussion, laceration, or other injuries. The *are* included in the risks being transferred to the CPSA and they are discussed in the remainder of this section:

Hangers which attach the mattress support to the hooks (see Figures 1 and 2) can detach or break. Recently the Commission learned of the death of a five-month-old boy in a crib which resulted after a mattress support hanger became detached from the hook on the crib corner post.

The crib involved in this accident was approximately five years old and had been used by two other families before the fatal accident. The current owner had used the crib for five months with

[34] *See, e.g., Grolier, Inc.*, 91 F.T.C. 315 (1978), *remanded on other grounds*, 615 F.2d 1215 (9th Cir. 1980), *modified on other grounds*, 99 F.T.C. 379 (1982); *Sears, Roebuck and Co.*, 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982); *Joy Norris Corp.*, 91 F.T.C. 761 (1978), *aff'd*, 598 F.2d 1244 (2d Cir.), *cert. denied*, 444 U.S. 989 (1979); *Porter & Dietsch, Inc.*, 90 F.T.C. 770 (1977), *aff'd* 605 F.2d 294 (7th Cir. 1979), *cert denied*, 445 U.S. 950 (1980).

[35] *See, e.g., American Consumer, Inc.*, 94 F.T.C. 648 (1979); *R.R. International, Inc.*, 94 F.T.C. 312 (1979); *C.I. Energy Development, Inc.* 94 F.T.C. 1337 (1979)

[1] Commissioner Terrence M. Scanlon voted against issuance of a final rule in this proceeding and issued a dissenting statement. Chairman Nancy Harvey Steorts and Commissioners Stuart M. Statler and Saundra Brown Armstrong voted to issue the final rule and issued separate statements explaining their votes in this manner.

no indication of any safety-related problem.

On the day of the accident, the father had moved the crib to install bumper pads to protect the child from hitting against the slats. A hanger at one of the corners next to the wall became detached. The detached hanger went unnoticed.

The child was put to bed at 10:00 p.m. At 7:30 the next morning, the child was found dead. The body was positioned with the head downward, the chin almost touching the floor. The legs were caught between the mattress and the siderail of the crib next to the wall.

The medical examiner determined that the cause of death was positional asphyxia, or asphyxia caused by the position in which the body had become entrapped. If a child remains upside down for a sufficient period of time, the child will be unable to breathe.

In this case, the child apparently had moved or rolled to the corner of the crib where the hanger was detached. The mattress and mattress support at that corner then tilted downward, and the child's head and upper body slipped through the gap between the frame of the crib and the mattress. The child was caught when the mattress and mattress support returned to a horizontal position after most of the child's weight had fallen through the gap.

The Commission is also aware of the recent death which occurred when a bracket for the guide rod of the dropside (see Figure 3) became loose. The child became entrapped against the frame of the crib and died.

Other hardware failures involve machine screws or bolts which can pull out or loosen. In one incident, a 13-month-old girl was in a crib with one fixed siderail and one dropside. The bolt holding the top rail of the fixed siderail to an end panel at one corner of the crib became loose. The threaded metal insert which should have held the bolt in place either was never supplied or was missing. The siderail could then move out at the top away from the end panel. The child's head was caught between the loose siderail and the end panel of the crib. It is believed that she slid down into the opening formed by the siderail and the end panel. She was caught by the neck and strangled to death.

In another incident involving a machine screw, the screw or bolt securing the bottom of the fixed siderail became disconnected from the cornerpost. This allowed movement of the siderail. The two-year-old girl in the crib fell through the opening between the siderail and the mattress at the corner where the bolt had come out. The child cried one time, and her parents found her trapped with her head caught between the mattress and the siderail. Her body was hanging between the mattress and the siderail. The child's entire weight was supported solely by her head. The victim was blue in the face and unable to breathe when found. She suffered soft tissue damage to the neck and abrasions. Because the victim was unable to breathe, she could not give a second cry. This may explain the absence of any crying by the children involved in many of these cases. Examination of the bolt and the threaded insert into which it fit revealed that when the bolt was inserted through the siderail into the threaded insert, the bolt engaged by only ⅛ inch, or 2½ threads.

Wood screws may also fail by pulling out or loosening. In one case an entire crib collapsed because the wood screws pulled out of the wood components of the crib. A seven-month-old boy was standing up in the crib at the time suffered fractures to the hand and wrist of his right arm, torn ligaments, and possible permanent disability of the hand and wrist. In other cases, wood screws holding the hooks to the cornerposts have pulled out and could not be retightened.

Some failures involve the hooks supporting the mattress hangers (see Figure 2). These hooks may bend or break. In one incident the lowest metal hook on one cornerpost of a crib broke, causing the 21-month-old boy in the crib to fall to the floor. In another incident the plastic hooks on a crib broke, leaving the victim hanging to the crib rail. Breakage was across the plastic strip containing the hooks, occurring immediately above three of the hooks. The 18-month-old boy in the crib was left hanging onto the siderail. In a third incident, the plastic hooks themselves broke off. The ten-month-old boy in the crib was thrown to the floor and the mattress and spring fell on top of him. The child was found vomiting, and bleeding from the right ear.

The Commission and its staff are currently aware of 46 in-depth investigations describing failures or omissions of crib hardware which have been conducted since 1980. In 19 of these incidents, the children died. In 12 other cases, the children became entrapped but were freed, and in another 15 incidents, the children suffered minor injuries including bruises, or no injury.

These and other incidents involving crib hardware failures or omissions during this period are included in a document titled "Special Report—Structural and Hardware Failure of Cribs," dated March, 1984, which was compiled by the Commission's Directorate for Epidemiology. This document is available for inspection in the Commission's public reading room, 8th floor, 1111 18th Street, NW., Washington, D.C., or by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

The Commission staff is also aware of approximately 10 incidents of breakage or deformation of hooks which occurred in 1978 and 1979.

Data concerning injuries to children in cribs were previously collected and published by the Commission in a document entitled *Hazard Analysis: Cribs* (NIIC–1504–75–H007), dated December 1975. This report lists eight cases involving full-size cribs in which various items of crib hardware failed. These incidents occurred from 1972 through 1974. Three of the victims involved in these incidents died. The others suffered hematoma to the head, contusions, abrasions, bruises, or no injury.

The staff continues to update its data concerning injuries associated with crib hardware failures and omissions.

C. Regulation Under FHSA

The risks of injury associated with crib hardware, described above, could be regulated by the Commission under provisions of the FHSA. Baby cribs are already the subject of regulations under the FHSA (16 CFR Parts 1508 and 1509). These regulations could be amended to ban cribs that fail to comply with requirements addressing hardware failures or omissions.

The Commission could begin a proceeding for the issuance of an amended rule to declare that cribs presenting the hardware risks are children's articles that present a mechanical hazard. FHSA, secs. 3(e)–(i); 15 U.S.C. 1262(e)–(i). If issued on a final basis, such an amended rule would have the effect of classifying the cribs as "banned hazardous substances" under section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit their distribution or sale in the United States and their importation into this country. If a children's article presents an "imminent hazard," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final amended rule issued under provisions of sections 3 (e) through (i) of the FHSA would also make the products in question subject to provisions of

section 15 of the FHSA (15 U.S.C. 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product, or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the products which are the subject of this notice only if the Commission had first issued a rule under provisions of sections 3 (e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard, unless the Commission publishes an order to declare that such products present an imminent hazard to the public health.

A proceeding to issue such a rule is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury, including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking, the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal; describe the costs and benefits of the rule; again consider alternative means to address the risk of injury, including voluntary standards; and publish a third notice in the **Federal Register** to issue the rule on a final basis. A substantive amendment to an FHSA regulation would have to follow the same procedure.

In summary, the Commission is authorized under the FHSA to issue a regulation (or amended regulation) declaring certain cribs to be banned hazardous substances. The rulemaking must consist of three stages—an advance notice of proposed rulemaking with public comment, a notice of proposed rulemaking with public comment, and a final rule that analyzes the public comments and includes a detailed regulatory analysis. Once rulemaking is completed, a process that could take two or more years, the Commission could initiate a proceeding to seek public notice and recall of the banned cribs, a process which itself would likely take about one year. In appropriate circumstances, the Commission could declare a product to be an imminent hazard to the public health, either before or during the rulemaking proceeding, which would have the effect of immediately banning the product and allowing the public notice and recall proceeding to be started. Whether or not a product is declared to be an imminent hazard, however, the rulemaking is expected to be continued.

D. Regulation Under CPSA

The CPSA has provisions for requiring public notification of substantial hazards which may be presented by these products and for ordering corrective action to be taken with regard to them without the necessity of first completing a rulemaking proceeding.

Additionally, the CPSA has provisions which authorize the Commission in certain cases to obtain an administrative order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. Under the FHSA, the Commission may not initiate a proceeding to obtain public notification or corrective action with regard to a hazard presented by a toy or children's article until the Commission has issued a final banning rule (unless the Commission publishes an order declaring the product to be an imminent hazard to the public health).

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the products described in this notice were subject to regulation under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that Act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States District Court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. As noted above, no corresponding provisions exist in the FHSA.

In summary, under the CPSA, the Commission may regulate a product in one or more different ways. First, after giving interested persons an opportunity for a hearing, the Commission may order that notice and recall be provided by firms manufacturing, importing, or distributing a product that presents a substantial product hazard. Unlike the FHSA, there are no requirements that the product first be declared a banned hazardous substance or that it first be subject to a consumer product safety rule. Second, the Commission may file an action in a United States District Court if a product presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. Third, the Commission may undertake rulemaking to declare the product a banned hazardous product or to subject the product to a consumer product safety standard.

Because notification to the public of any hazard which may be presented by the products described in this notice and remedial action with regard to those products could be accomplished more effectively and expeditiously under the CPSA than under the FHSA, the Commission preliminarily determined

that it would be in the public interest to regulate under the CPSA rather than the FHSA any crib hardware risks described in this notice. The Commission therefore, in December 1983, solicited written comments on a proposed transfer rule.

E. Comments on Proposal

In response to the proposal of December 27, 1983, the Commission received three comments. A comment from the Juvenile Products Manufacturers Association, Inc. (JPMA) contained many objections to the proposed rule, and urged the Commission not to issue it on a final basis. A comment from Evenflo Juvenile Products Company similarly objected, citing some of the same points made by JPMA. The third comment, from Simmons Juvenile Product Company, Inc., merely expressed support for the JPMA position.

JPMA's first objection to the proposal (the Evenflo comments will be addressed with the JPMA comments, even though they will not be separately mentioned) alleges that the transfer of regulation in this case is "solely for administrative convenience" of the Commission, and for that reason is prohibited by the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *Gulf South Insulation et al.* v. *CPSC*, 701 F.2d 1137 (1983).

When the Commission proposed the transfer rule for crib hardware in December 1983, it was well aware of the *Gulf South* decision. The Commission believed then, and continues to believe, that the court's interpretation of the provisions of section 30(d) of the CPSA in that case is not applicable to the crib hardware transfer rule.

The action reviewed in the *Gulf South* case was the issuance of a rule under the CPSA banning urea formaldehyde foam insulation. Because the product involved in the *Gulf South* case was not a toy or children's article,the procedures for issuance of the banning rule under the CPSA differed considerably from those required for issuing a ban under the FHSA. In *Gulf South*, the court expressed particular concern about the "due process" considerations of regulating the insulation under the CPSA as opposed to the FHSA.

However, in the case of children's articles, such as crib hardware, the procedures required to issue a banning rule under the FHSA are almost identical to those required for such a rule under the CPSA. If the Commission sought public notification or remedial action with regard to the risk of injury associated with crib hardware, provisions of section 15 of the CPSA (15 U.S.C. 2064) require an adjudicatory hearing before the Commission could issue any order to require notification of the public or remedial action. Such a hearing would afford any affected person or firm with the "due process" safeguards which the court apparently believed to be lacking in the *Gulf South* case.

Finally, in *Gulf South* the court had limited its discussion of the requirements of section 30(d) of the CPSA to products which are not "extremely dangerous." Because crib hardware products have been associated with the deaths of twenty-seven children since 1980 (*see* "Summary of Sixty-seven Incidents Associated with Crib Hardware—January 1980–March 1983"), they are beyond the scope of the discussion of section 30(d) in the *Gulf South* case.

The JPMA comment contends that the Commission's emphasis on "due process" protections provided by section 15 of the CPSA (in a previous 30(d) rulemaking) is misplaced. JPMA puts aside such questions as constitutional requirements for due process, and argues that the thrust of the *Gulf South* decision is that "the extra procedures of the FHSA, whatever they may be, may not be discarded simply for administrative convenience or speed."

The Commission rejects JPMA's contention that the interpretation of section 30(d) of the CPSA enunciated in *Gulf South* prohibits issuance of a final transfer rule in this instance. As stated above, the Commission finds that transfer of regulation of the risk of injury associated with crib hardware is in the public interest because notification to the public and remedial action with regard to these products, if needed to protect the public from any hazard which they present, can be accomplished more expeditiously under the CPSA than under the FHSA. The Commission does not accept the comment's characterization of the basis of its public interest finding as one which is "solely for the administrative convenience" of the Commission. Rather, the Commission finds that expeditious action to prevent death and permanent injury to young children is clearly distinguishable from action taken for "administrative convenience."

The Commisison also rejects the contention expressed in JPMA's comment that the *Gulf South* decision requires the Commission to observe "the extra procedures of the FHSA" in this instance without regard to the purpose or end which those procedures are intended to serve. The Commission finds the opinion of the court in *Gulf South* to be totally devoid of any language which would support the mechanistic approach to application of section 30(d) of the CPSA advanced in this comment.

The comment also argues that the Commission has not even alleged in its proposal that crib hardware products are "extremely dangerous" products and for that reason outside the scope of the discussion of section 30(d) of the CPSA in the *Gulf South* decision. However, the Commission has received reports of the deaths of twenty-seven children, since 1980, associated with crib hardware. The Commission concludes that these reports provide adequate factual support for its belief that crib hardware products are beyond the scope of the discussion of section 30(d) in the *Gulf South* opinion.

In the notice of December 27, 1983, the Commission stated that it was proposing the transfer of regulation of the "possible" risks associated with crib hardware. After consideration of the injury information discussed above, the Commission concludes that more than "possible" risks are involved with these products. Consequently, § 1145.14(a) of the rule issued below states that the Commission is transferring regulation of "risks of death or injury that may be associated with" crib hardware to the CPSA from the FHSA.

F. Adequacy of FHSA

The JPMA comment expresses the view that the decision in *Gulf South* is not the only reason for continuing to regulate crib hardware under the FHSA. The comment states that, as children's articles, cribs have always been regulated under the FHSA. The comment outlines the rulemaking and enforcement provisions of the FHSA applicable to children's articles, and urges the Commission to continue regulation of cribs under the FHSA because the FHSA contains all provisions needed by the Commission to assure the safety of children's products, and at the same time contains protection for manufacturers and the public. The comment observes that, in appropriate cases, section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorizes the Commission to declare children's articles to be "imminent hazards," which has the effect of categorizing them as "banned hazardous substances" pending completion of a rulemaking proceeding.

The Commission has considered the possibility of invoking the imminent hazard provisions of the FHSA before deciding to issue this rule on a final basis. However, the Commission observes that some products may present a "substantial product hazard"

warranting issuance of an order for public notification and corrective action under section 15 of the CPSA without amounting to an "imminent hazard" as that term is used in section 3(e)(2) of the FHSA. The Commission believes that, notwithstanding the "imminent hazard provisions" of section 3(e)(2) of the FHSA, use of the procedures of the CPSA may lead to more effective and expeditious notification and corrective action in the case of crib hardware than might be obtained by following the procedures of the FHSA.

On the same general subject, the JPMA comment observes that the Commission's proposal to transfer regulation of risks of injury associated with crib hardware to the CPSA was made "for no apparent reason other than the allegation that procedures of the FHSA are more time consuming than those of the CPSA."

Again, the Commission does not accept this characterization of the basis for its finding of public interest in transfering regulation of crib hardware to the CPSA. The Commission's finding of public interest for the issuance of the transfer rule published below is that protection of the public from any hazard presented by crib hardware can be accomplished more effectively and expeditiously under the CPSA than under the FHSA. In reaching this conclusion, the Commission has carefully considered the provisions of the FHSA and the CPSA, both before proposing the transfer rule and again before deciding to issue the rule on a final basis.

G. Economic Impact on Small Businesses

The JPMA comment also objects to issuance of a final transfer rule because the Commission has not prepared an initial analysis of the anticipated effect of the proposed rule on small businesses in accordance with provisions of section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603).

The comment states that some of the firms which manufacture cribs are small entities (a term used in the RFA which includes small businesses). The comment alleges that if the transfer rule is issued on a final basis and action is taken under provisions of section 15 of the CPSA (15 U.S.C. 2064) to order public notification or corrective action with regard to any hazard presented by crib hardware, manufacturers of cribs will lose procedural protections afforded by the rulemaking requirements of the FHSA. The comment argues that such a result will have a substantial impact on these firms.

As noted in this comment, section 605(b) of the RFA (5 U.S.C. 605(b)) provides that an agency is not required to prepare an initial analysis of the anticipated impact of a proposed rule if it certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small businesses.

In the proposal of December 27, 1983, the Commission made the certification required by section 605(b) of the RFA, stating that the rule, if issued on a final basis, will not impose any legal obligation on any person or firm. The proposal observed that if the Commission issues the rule on a final basis and then determines that it should act to address any risk of injury transferred by the rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Although the comment contends that the proposal "indicates that the Commission intends to act pursuant to section 15 of the CPSA," neither the proposal nor the rule issued below will cause any action to be taken under section 15 of the CPSA or under any other provision of that act.

While the provisions of section 15 of the CPSA were discussed in the proposal and cited as a factor in the Commission's decision to propose the transfer rule, it would also be possible for the Commission to undertake rulemaking under provisions of sections 7, 8, and 9 of the CPSA (15 U.S.C. 2056, 2057, 2058).

If the Commission undertakes any rulemaking proceeding under the CPSA with regard to any risk associated with crib hardware, the Commission will comply with all applicable provisions of the RFA.

H. Desirability of Rulemaking

The JPMA comment also states that the Commission should address any risk of injury associated with crib hardware by rulemaking, or by reliance on voluntary action by manufacturers of these products. The comment states that because alleged crib hardware risks are "generic," any action taken by the Commission to address them will necessarily have an industry-wide effect. Because the rulemaking provisions of the FHSA which are applicable to children's articles are substantially similar to the rulemaking provisions of the CPSA, the comment further argues that no reason exists to transfer regulation from the FHSA to the CPSA.

In addition to the generic nature of the crib hardware risks, the comment cites the following additional factors as supporting the desirability of rulemaking, as distinguished from adjudication, to address any such risks:

1. Any action taken to address such risks of injury would be an abrupt change in established law because those products are in compliance with established crib regulations;

2. Adjudicative proceedings under section 15 of the CPSA would have a retroactive effect because they would be applicable to products already manufactured and sold; and

3. Adjudicative proceedings under provisions of section 15 of the CPSA would exclude various parties including consumers, consumer groups, pediatric experts, industry, and the public at large from participation.

4. Any such change in policy would be drastic and unexpected.

JPMA has also asserted that several judicial decisions require the Commission to proceed by rulemaking rather than by adjudication if the Commission seeks to "change the law and establish rules of widespread application," citing three cases decided by the U.S. Court of Appeals for the Ninth Circuit: *Ford Motor Co.* v. *FTC*, 673 F.2d 1008 (1981); *Patel* v. *INS*, 638 F.2d 1199 (1980); and *Ruangswang* v. *INS*, 591 F.2d 39 (1978); and one decided by a U.S. District Court: *Pharmaceutical Manufacturers Association* v. *Finch*, 307 F. Supp. 858 (D. Del. 1970).

Finally, the JPMA comment urges the Commission to rely on voluntary action proposed by manufacturers of cribs to address any risks of injury presented by their products. The comment states that CPSC and current administration policy favors voluntary action, and that JPMA—always a leader in developing voluntary juvenile product standards—is ready and willing to develop one in this area.

JPMA's objections to issuance of a final transfer rule seem to assume that the Commission would follow final issuance of such a rule with the initiation of adjudicative provisions of section 15 of the CPSA—and no other action. Although not discussed in the December 1983 proposed transfer rule, the possibility exists that the Commission might (after issuing a final transfer rule) initiate one or more adjudicative proceedings under section 15 of the CPSA *and* begin a proceeding for the issuance of a consumer product safety rule applicable to crib hardware. The Commission may determine that one or more adjudicative proceedings under section 15 of the CPSA are needed

to obtain public notification and remedial action with regard to products which are in channels of distribution and in the possession of consumers. At the same time, the Commission might also determine that issuance of a consumer product safety rule may be necessary to affect future production of such products. (it is also possible that voluntary action by crib manufacturers would make any mandatory action unnecessary, even after a final transfer rule were issued.)

In view of all possible actions which could be taken under various provisions of the CPSA, the Commission concludes that the cases and other authority cited by JPMA do not preclude issuance of a final transfer rule in accordance with section 30(d) of the CPSA in this proceeding.

With regard to the contention made in JPMA's comment that various parties, including consumers, consumer groups, pediatric experts, industry, and the general public, would be excluded from participation in an adjudicative proceeding under section 15 of the CPSA, the Commission observes that before public notification or corrective action can be ordered under that section, the Commission must afford opportunity for a hearing to "interested persons, including consumers and consumer organizations." See sections 15 (c) and (d). Additionally, the Commission's rules of practice for adjudicative proceedings (16 CFR Part 1025), which govern hearings in proceedings under section 15 of the CPSA, provide at § 1025.17 for intervention by "any person who desires to participate as a party" in such a proceeding. See 16 CFR 1025.17(a). For these reasons, the Commission concludes that if it initiates any proceeding under section 15 of the CPSA concerning crib hardware, all interested persons will have opportunity to participate in any hearing which may be conducted.

As noted above, the comment cites three decisions by the U.S. Court of Appeals for the Ninth Circuit in support of the contention that the Commission is obligated to proceed by rulemaking in this instance because any action taken with regard to crib hardware will have "widespread application." However, the comment does not discuss another case in which the same court recently stated that the decision of whether to establish administrative policies by adjudication or by rulemaking lies with the discretion of the agency. *Saavedra* v. *Donovan*, 700 F.2d 496, at 499 (1983).

JPMA does use yet another Ninth Circuit decision, *Montgomery Ward & Co.* v. *FTC*, 691 F.2d 1322 (1982), to support its position that adjudication is impermissible. Specifically, JPMA quotes language that discusses a situation in which "[a]n adjudicatory restatement of [a] rule becomes an amendment." The Commission's response to the quoted language is that it does not apply to the crib regulations or to any adjudications concerning crib hardware risks that the Commission might ever undertake. The situation in *Montgomery Ward* involved a recently-issued Federal Trade Commission rule that described required conduct in some detail, reliance by Montgomery Ward on the plain meaning of that rule, and an adjudicatory restatement of that rule. *Ward* at 1328–29. The crib hardware situation is completely different because the previously-issued crib regulations do not address the crib hardware risks that are included within the transfer rule issued below. In short, there is no "adjudicatory amendment" involved.

In any case, the Ninth Circuit stated in both *Saavedra* and *Montgomery Ward* that its authority to set aside an agency's decision to announce and implement policy by adjudication is limited to those instances in which such a decision amounts to an abuse of discretion by the agency. Both decisions are consistent with those of the United States Surprme court in *NLRB* v. *Bell Aerospace*, 416 U.S. 267 (1974); *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969); *FTC* v. *Universal Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411 (1958); and *SEC* v. *Chenery*, 332 U.S. 194 (1947).

In addition, the Commission does not agree with JPMA that the crib hardware risks are "generic" in nature. Hardware is product specific because each crib manufacturer uses a different set of parts, usually in its own configuration. While there may be some overlap, the configurations are noticeably different. In addition, the crib hardware risks involve specific failures, and each particular failure usually involves only one manufacturer.

With regard to voluntary industry action to address crib hardware risks, the Commission agrees that such action has advantages over both mandatory and-adjudicative proceedings.

The Commission has been informed that on March 27, 1984, crib manufacturers met to review injury and accident data related to the structural integrity of cribs. The Commission has been advised that at this meeting, manufacturers also discussed strategies to address various hazard patterns, including those related to hardware failures and omissions.

The Commission has also been advised that in June of 1984, ASTM Voluntary Standards Task Group F 15.21 is scheduled to meet and begin drafting requirements for a voluntary standard to address hazards associated with structural integrity of cribs, including those related to hardware failures and omissions.

The Commission applauds all efforts to develop voluntary standards to eliminate or reduce any risks of injury which may be associated with cribs. However, the Commission observes that no voluntary standard now in existence addresses any of the risks of injury which are the subject of the rule issued below, and that publication of a final voluntary standard to address those risks will require several months.

The Commission has carefully considered the nature and severity of the risks of injury presented by crib hardware; provisions of the FHSA and the CPSA which could be invoked to address such risks of injury; the need of the public for protection from the risks of injury; the interests of manufacturers, importers, distributors, and retailers of cribs; all issues raised by the comments received in response to the proposed transfer rule; and applicable judicial decisions. After consideration of all of these factors, the Commission concludes that to the extent that issuance of the final rule published below may result in the announcement or implementation of policy by adjudication, the decision to issue the rule is an exercise of sound discretion.

I. Effective Date

The Administrative Procedure Act requires at 5 U.S.C. 553 that a "substantive rule" must be published at least 30 days before its effective date, unless the agency finds for good cause that an earlier effective date is needed, and publishes that finding with the final rule.

As previously stated, the rule issued below will not, by itself, impose any new requirement or obligation on any person or firm. The rule simply announces that if the Commission takes action with regard to crib hardware, it will do so under provisions of the CPSA rather than those of the FHSA. Any action the Commission might take would provide adequate notice and opportunity to respond.

For this reason, the requirement of 5 U.S.C. 553 for publication of a substantive rule at least 30 days before its effective date is not applicable. The rule issued below shall become effective immediately.

J. Summary

The Commission concludes that if regulation of the risk of injury presented by crib hardware is necessary at all, it would be in the public interest to regulate such risk under the CPSA rather than under the FHSA. The FHSA would allow the product to be banned by a rulemaking procedure that would likely take at least two years. Following that, the Commission could, if appropriate, begin a proceeding to order firms to give notice of the risk and to recall the product, a process which itself could take about one year. Thus, if public notice and recall were found to be the appropriate remedies, it would take about three years to obtain these remedies under the FHSA. Although the process could be shortened, as discussed above, by declaring the product to be an imminent hazard to the public health, the Commission does not believe, based on presently available information, that that would be an appropriate approach. Under the CPSA, as discussed above, no rulemaking is necessary before public notice or recall is sought. Thus, if public notice or recall is found to be necessary because the product presents a substantial product hazard, either or both could be obtained at least two years sooner under the CPSA.

Therefore, the Commission finds that it is in the public interest to transfer regulation of any risks of injury which may be presented by crib hardware because public notification and corrective action can be accomplished more effectively and more expeditiously under the CPSA than under the FHSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

Accordingly, under provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92-573, 86 Stat. 1207, as amended, Pub. L. 94-284, 90 Stat. 503, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d)), the Commission amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding new a section 1145.14, as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

§ 1145.14 Baby cribs with certain hardware failures or omissions; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, risks of death or injury that are associated with baby cribs having items of hardware which break, become loose, detach, or otherwise fail to perform their intended function, or which have been omitted; except those risks of injuries associated with baby cribs which are addressed by provisions of 16 CFR 1500.18(a)(13), Part 1508; 1500.18(a)(14), Part 1509.

(b) Therefore, if the Commission finds regulation to be necessary, such risks of death or injury which are associated with baby cribs having any of the hardware failures or omissions described in § 1145.14(a) shall be regulated only under one or more provisions of the Consumer Product Safety Act.

(Sec. 30(d), Pub. L. 92-573, 86 Stat. 1207, as amended Pub. L. 94-284, 90 Stat. 503, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d))

Effective date: This amendment shall be effective on April 10, 1984.

Dated: April 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

BILLING CODE 6355-01-M

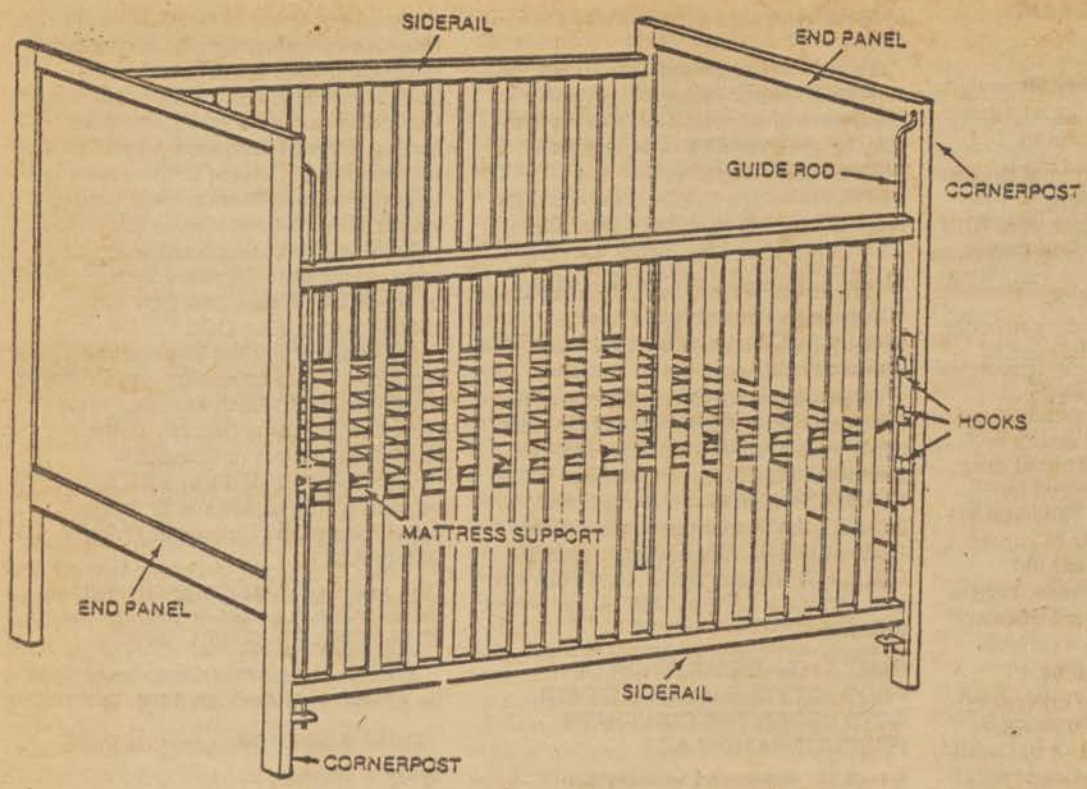

FIG. 1

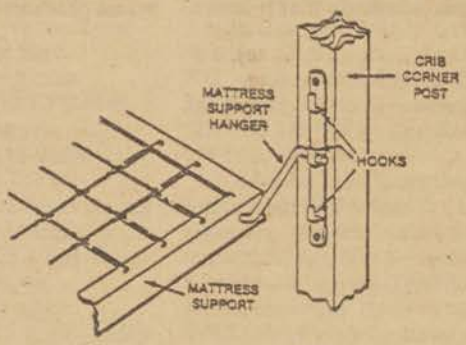

FIG. 2

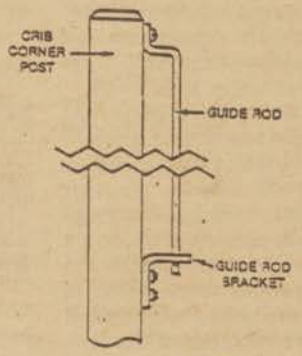

FIG. 3

[FR Doc. 84-9634 Filed 4-9-84; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Prochlorperazine, Isopropamide, With Neomycin Sustained-Release Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Norden Laboratories, Inc. The NADA provides for the use in dogs of capsules containing the drug combination prochlorperazine, is propamide, with neomycin for treatment of infectious gastroenteritis.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, is sponsor of NADA 31-914 which provides for use of Neo-Darbazine® Spanule® Capsules containing sustained-release prochlorperazine dimaleate combined with isopropamide iodide and neomycin sulfate. The capsules are indicated for use in dogs in which infectious gastroenteritis is associated with emotional stress.

NADA 31-914 was originally approved by letter dated July 6, 1966. At that time approvals were not codified by publication in the **Federal Register.** Accordingly the regulations are now amended to codify Norden Laboratories' approved NADA. This action, codification of a previously approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Because the NADA was approved before July 1, 1975, the sponsor was not required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii). However, a summary of the basis for approval is available upon request in accordance with § 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1921 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.1921 Prochlorperazine, isopropamide, with neomycin sustained-released capsules.

(a) *Specifications.* Each capsule contains either:

(1) Capsule No. 1: 3.33 milligrams of prochlorperazine (as the dimaleate), 1.67 milligrams of isopropamide (as the iodide), and 25 milligrams of neomycin base (as the sulfate); or

(2) Capsule No. 3: 10 milligrams of prochlorperazine (as the dimaleate), 5 milligrams of isopropamide (as the iodide), and 75 milligrams of neomycin base (as the sulfate).

(b) *Sponsor.* See No. 011519 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer capsules orally twice daily to dogs as follows:

Animal weight (pounds)	Number of capsules per dose	
	Capsule No. 1	Capsule No. 3
10 to 20	1	
20 to 30	2	
Over 30	3	1
Over 60		2

(2) *Indications for use.* For treatement of dogs in which infectious bacterial gastroenteritis is associated with emotional stress.

(3) *Limitations.* Do not continue medication longer than 5 days. Overdosage or prolonged administration may produce nephrotoxicity as manifested by albuminuria, presence of granular casts and depressed urinary output. If it is desirable to administer a vasoconstrictor, norepinephrine is the drug of choice. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. April 10, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 3, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-9474 Filed 4-9-84; 8:45 am]

BILLNG CODE 4160-01-M

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline Hydrochloride Tablets

Correction

In FR Doc. 84-3070 beginning on page 4373 in the issue of Monday, February 6, 1984, make the following correction: In column three, first complete paragraph, line three, "55-0108" should read "55-018".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Timber Sale Contract Extensions

AGENCY: Forest Service, USDA.

ACTION: Extension of deadline for interim modifications of timber sale contracts.

SUMMARY: On December 7, 1983 (48 FR 54812) the Forest Service announced adoption of a final policy for extending certain timber sale contracts. Under that policy, purchasers of contracts which already had been extended under previous extension policies could apply for interim modifications of those contracts by February 15, 1984.

The Forest Service hereby gives notice that the deadline for requesting interim modifications of these timber sale contracts is extended to April 16, 1984.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Wendall Jones, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-4051.

Dated: April 4, 1984.

R. Max Peterson,

Chief.

[FR Doc. 84-9440 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 465

[FRL-2561-2]

Coil Coating Point Source Category, Canmaking Subcategory; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction of final rule.

SUMMARY: This document corrects the promulgated limitations and standards for the Coil Coating Point Source Category, Canmaking Subcategory that appeared in the **Federal Register** on Thursday, November 17, 1983 (48 FR 52380).

This action is necessary to correct typographical errors in the document.

ADDRESSES: Technical information may be obtained by writing to Ms. Mary L. Belefski, Effluent Guidelines Division (WH-552), EPA, 401 M Street SW., Washington. D.C. 20460, or by calling (202) 382-7126. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, VA 22161 (703) 487-4600.

The Record is available for public review in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M St., SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 382-7126.

Corrections:

1. On page 52380, column 3, line 13, change "NSP" to "NSPS".
2. On page 52382, column 1, line 59, change "data supplied was used" to "data supplied were used".
3. On page 52382, column 2, line 32, change "Seamed cans" to "seamed cans".
4. On page 52383, column 1, line 23, change "Stokes law" to "Stokes' law".
5. On page 52384, column 3, line 50, change "215.0 1/1000 cans" to "215.0 l/1000 cans".
6. On page 52384, column 3, line 52, change "20.3 1/1000 cans" to "20.3 l/1000 cans".
7. On page 52384, column 3, line 53, change "964 1/1000 cans" to "964 l/1000 cans".
8. On page 52385, column 1, line 8, change "for which we have date" to "for which we have data".
9. On page 52385, column 1, line 30, change "Chromium " to "chromium".
10. On page 52385, column 1, line 52, change "Based limitations on the BPT" to "based limitations based on the BPT".
11. On page 52385, column 2, line 47, change "83.9 1/1000 cans" to "83.9 l/1000 cans".
12. On page 52385, column 3, line 6, change "Chromium" to "chromium".
13. On page 52385, column 3, line 53, change $0.017 million" to "$0.014 million".
14. On page 52385, column 3, line 59, change "14 1/1000 cans" to "14 l/1000 cans".
15. On page 52386, column 1, line 10, change "63.6 1/1000 cans" to "63.6 l/1000 cans".
16. On page 52386, column 1, line 26, change "Chromium" to "chromium".
17. On page 52386, column 3, line 26, change "0.01 mg/1" to "0.01 mg/l".
18. On page 52387, column 3, line 57, change "2-piece" to "two-piece".
19. On page 52388, column 2, line 29, change "2-piece" to "two-piece".
20. On page 52389, column 2, line 40, change "NSSP" to "NSPS".
21. On page 52390, column 1, line 12, change "0.11 million kilowatt-hours per year." to "0.30 million kilowatt-hours per year.".
22. On page 52390, column 1, line 29, change "2.93 million kilowatt hours per year." to "7.92 million kilowatt hours per year.".
23. On page 52391, column 3, line 38, change "83.9 1/1000 cans" to "83.9 l/1000 cans".
24. On page 52391, column 3, line 51, change "CMBD" to "CMDB".
25. On page 52394, column 1, line 40, change "(TTO))" to "(TTO)".
26. On page 52394, column 2, line 21, change "oil and grease solvents" to "oil and grease, solvents,".
27. On page 52394, column 2, line 54, insert a period after "15th ed".
28. On page 52394, column 2, line 62, insert closing parenthesis after "(Method 502E".
29. On page 52395, column 2, line 17, change "2-piece" to "two-piece".
30. On page 52396, column 1, line 30, insert "limitations guidelines" after "final effluent".
31. On page 52396, column 3, line 5, change "equipement" to "equipment".
32. On page 52397, columns 2 and 3, in the table that bridges the columns entitled "Indirect Dischargers Schedule for Submittal and Compliance", insert an "or" on the line between "60 days" and "60 days".
33. On page 52398, column 1, line 27, change "direct discharges" to "indirect discharges".
34. On page 52398, column 1, line 72, change "053 Hexachloromyclopentadiene" to "053 Hexachlorocyclopentadiene".
35. On page 52398, column 3, line 27, change "067 Butyl benzylphthalate" to "067 Butyl benzyl phthalate".
36. On page 52398, column 3, line 28, change "068 Di-N-butyl phthalate" to "068 Di-n-butyl phthalate".
37. On page 52398, column 3, line 48, change "067 Butyl benzylphthalate" to "067 Butyl benzyl phthalate".
38. On page 52398, column 3, line 49, change "Di-N-butyl phthalate" to "Di-n-butyl phthalate".

§ 465.03 [Amended]

39. On page 52399, column 2, paragraph (c)(5), delete the words "except where total O&G is specifically required".
40. On page 52399, columns 2 and 3, the equation in the center of the columns, that bridges the columns change

$$\text{"mg (hydrocarbon oil and grease)/1} = \frac{E \times 1000}{\text{ml/sample"}}$$

to

$$\text{"mg (hydrocarbon oil and grease)/1} = \frac{E \times 1000}{\text{ml/sample"}}$$

41. On page 52399, column 3, line 23 from the bottom of the page, change "reasd" to "read".

§ 465.41 [Amended]

42. On page 52400, column 1—§ 465.41 table, change "F . . . 12790.00 (28.197) 5676.00 (12.513)" to "F . . . 12792.50 (28.203) 5676.00 (12.514)".

§ 465.43 [Amended]

43. On page 52400, column 2—§ 465.43 table heading, change "SUBPART D—NSPS Effluent Limitations" to "SUBPART D—NSPS".

§ 465.44 [Amended]

44. On page 52400, column 3—§ 465.44 table heading, change "SUBPART D—PSES Effluent Limitations" to "SUBPART D—PSES".

§ 465.45 [Amended]

45. On page 52400, column 3—§ 465.45, change "Except as provided in § 403.7" to "Except as provided in 40 CFR 403.7".

Dated: March 29, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84-9339 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-68, Suppt. 1]

Assignment and Utilization of Space

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to May 15, 1985 the expiration date of FPMR Temporary Regulation D-68. D-68 sets forth simplified and streamlined GSA space management regulations, and mandates improved cost effectiveness in agencies' use of space.

DATES: Effective date: February 1, 1984. Expiration date: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Jo-Anne D. Venneberg, Acting Assistant Commissioner for Space Management (202) 566-1025.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Chapter 101—[Amended]

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter D.

Federal Property Management Regulations

Temporary Regulation D-68

Supplement 1

TO: Heads of Federal agencies

SUBJECT: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-68.

2. *Effective Date.* February 1, 1984.

3. *Expiration Date.* This supplement expires on May 15, 1985.

4. *Explanation of Changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation D-68 is revised to May 15, 1985.

Ray Kline,

Acting Administrator of General Services.

March 8, 1984.

[FR Doc. 84-9542 Filed 4-9-84; 8:45 am]

BILLING CODE 6820-23-M

41 CFR Part 101-41

[FPMR Amendment G-65]

Cancel Standard Form 1131, U.S. Government Transit Bill of Lading

AGENCY: Office of the Comptroller, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Code of Federal Regulations (CFR) and the Federal Property Management Regulations (FPMR) by removing reference to and illustrations of the U.S. Government Transit Bill of Lading (transit GBL) set, Standard Form (SF) 1131 through SF 1134. Inventory records indicate that no orders for this form have been received for more than one year. Cancelling this accountable transportation document will eliminate GSA's need to print and maintain an inventory for Federal agencies.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits (202 786-3014).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291, of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The transit GBL has been in use by the Government for more than 40 years. Demands for this form, however, have slackened during the past few years. National Archives and Records Service (NARS) reports that no orders for this form were received from Federal agencies for more than a year. NARS suggested cancelling this form.

A proposed rulemaking was published in the **Federal Register** on October 13, 1983 (48 FR 46554), inviting comments for 45 days ending November 28, 1983. The Office of Transportation, Office of Federal Supply and Services, GSA, suggested some editorial changes that we adopted. The largest user of this form, the Department of Defense, advised us prior to publication of the proposed rulemaking that it had no objection to cancelling this form.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

Title 41, Part 101-41 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 101-41 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101-41 is amended by revising the following entries:

Sec.
101–41.305–1 General instructions for the preparation of GBL's involving transit.
101–41.305–3 Preparing GBL's covering free or surrendered transit.

3. Section 101–41.302–1 is amended by removing and reserving paragraphs (o) through (t) as follows:

§ 101–41.3021 Listing of forms.

* * * * *

(o)–(t) [Reserved].

* * * * *

4. Section 101–41.302–2 is amended by revising paragraph (a) introductory text, (d) and, (e) and by removing and reserving paragraph (b) to read as follows:

§ 101–41.302–2 Description and distribution of bills of lading.

(a) The U.S. Government bill of lading (GBL) consists of six basic forms and is available in sets of seven or nine parts, depending on the number of memorandum copies needed. The sets are carbon-interleaved for simultaneous preparation. The GBL set is arranged in the following order:

* * * * *

(b) [Reserved].

* * * * *

(d) The GBL continuation sheets (SF 1109 through 1112) are also available in seven- or nine-part sets and are arranged in order corresponding to the GBL sets. The continuation sheets are for use with the regular GBL and the personal property GBL.

(e) Separate sheets of the memorandum copies (SF 1103–A, SF 1109–A, and SF 1203–A) are available to Government agencies for addition to the seven- or nine-part sets.

5. Section 101–41.302–4 is amended by revising paragraph (a) to read as follows:

§ 101–41.302–4 General instructions for the preparation of GBL's and common problem areas.

(a) *Availability of guide.* Instructions for the preparation of GBL's and related forms are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

6. Section 101–41.302–7 is revised to read as follows:

§ 101–41.302–7 GBL correction notice.

SF 1200 is used to alter or correct the GBL and the personal property GBL. It is a single sheet form, and the number of copies to be prepared and distributed will be a matter for each Federal agency to establish. Recipients of a correction notice will alter or correct the GBL as indicated on the notice and attach the form to the GBL. Preparation of SF 1200 is not required when alterations or corrections are made prior to the distribution of the GBL. The form is not subject to the provisions of the Paperwork Reduction Act of 1980 (94 Stat. 2812, 44 U.S.C. Chapter 35).

7. Section 101–41.305–1 is revised to read as follows:

§ 101–41.305–1 General instructions for preparing GBL's involving transit.

Availability of guide. Instructions necessary to provide carriers with inbound transit information are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity. Transit information previously entered on obsolete Forms SF 1131 through SF 1134 (transit GBL) must now be entered on the regular GBL.

8. Section 101–41.305–2 is amended by revising paragraphs (b) and (c) introductory text to read as follows:

§ 101–41.305–2 Transit records; processing and distribution.

* * * * *

(b) *Application of transit tonnage.* Inbound transit information shall be provided in the "Description of Articles" block of the GBL or, lacking space, on a U.S. Government Bill of Lading continuation sheet which is to be attached to the GBL.

(c) *Furnishing transit certificates.* Transit certificates (record of transit tonnage and application) need not be prepared and furnished to GSA (BWAA/C) when the paying office normally verifies or enters the inbound billing information in the "Description of Articles" block of the GBL. If the paying office does not verify or provide inbound billing information, the certificates shall be furnished to General Services Administration (BWAA/C), Washington, D.C. 20405, as follows:

* * * * *

9. Sections 101–41.305–3, 101–41.305–4, and 101–41.305–5 are revised to read as follows:

§ 101.41.305–3 GBL's covering free or surrendered transit.

A GBL covering free or surrendered transit is issued for use with an outbound shipment from the transit installation where the line-haul charge to the transit installation equals or exceeds the through transportation charge plus the transit charge. After completing the "Certificate of Carrier Billing for Charges" section of the GBL covering free transit, the billing carrier shall attach the GBL to an SF 1113 bearing the carrier's bill number and submit both forms to the paying office of the agency concerned with a check for any amount due the United States.

§ 101–41.305–4 Billing for transit shipment.

A separate SF 1113 with the word "TRANSIT" typed immediately beneath the caption "ALPHA PREFIX AND SERIAL NO. OF SUBVOUCHER" shall be prepared for each GBL covering a transit shipment.

§ 101–41.305–5 Paying office action on transit billings.

The paying office shall verify and, if necessary, correct the transit information shown on the GBL. When the required transit information is not shown, the paying office shall enter the following information in the "Description of Articles" block of the GBL, or on a GBL continuation sheet, under a heading "TRANSIT RESHIPPING CERTIFICATE—INBOUND BILLING REFERENCES": the disbursing office (D.O.) voucher number, bureau voucher number, if any, the date of payment, and the D.O. symbol number of the inbound billing, before forwarding the SF 1113 and a notice of any refunds to GSA BWAA/C. Vouchers with the accompanying GBL covering free or surrendered transit shall be transmitted to GSA (BWAA/C) separate from other types of transportation vouchers.

10. Section 101–41.306 is amended by revising paragraph (b) to read as follows:

§ 101–41.306 Disposition of GBL forms upon delivery of property to carrier for shipment.

* * * * *

(b) The issuing office shall retain a certified memorandum copy; i.e., the issuing office copy (SF 1103–A and SF 1109–A, if any), and sent the consignee copy (SF 1103–B and SF 1109–B, if any) to the consignee. A contractor acting as shipper shall retain one certified memorandum copy, forward one copy to the issuing office, and send the consignee copy to the consignee.

* * * * *

11. Section 101–41.307–1 is revised to read as follows:

§ 101-41.307-1 Substitute document.

When the original GBL (SF 1103) has been lost or destroyed, the billing carrier shall use the freight waybill (original) (SF 1105), properly certified by the issuing office and by the carrier, as a substitute document for billing the charges. Execution of the "Certificate of Carrier Billing for Charges" on the substitute document is not required for charges billed under the exception procedures in § 101-41.312.

12. Section 101-41.307-6 is revised to read as follows:

§ 101-41.307-6 Lost GBL's and freight waybills (original).

When both the original GBL (SF 1103) and the original freight waybill (SF 1105) are lost or destroyed, the carrier shall request from the issuing office a certified true copy of that office's memorandum copy (SF 1103-A) of the GBL. The issuing office shall make its certification regarding the services requested on the reverse of that copy and forward it to the carrier for certification of delivery and billing. Execution of the carrier's certificate of delivery on the substitute document is not required for charges billed under the exception procedures in § 101-41.312. If the lost GBL (original) or freight waybill (original) is recovered, the procedures in § 101-41.307-4 and § 101-41.307-5, as applicable, shall be followed.

13. Section 101-41.308-1 is amended by revising paragraph (b) to read as follows:

§ 101-41.308-1 Agency control.

* * * * *

(b) The personal property GBL assemblies are sequentially numbered with six digits and a two-letter prefix, the second of which is always P; e.g., AP-000,001 through AP-999,999, then BP, CP, etc.

14. Section 101-41.310-2 is amended by revising paragraph (a) to read as follows:

§ 101-41.310-2 Preparation of carrier billing forms.

(a) Instructions for the preparation of SF 113, Public Voucher for Transportation Charges, are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610-00-682-6740). Agencies may obtain copies of this guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

§§ 101-41.4901-1131 through 101-41.4901-1134 [Removed]

15. Sections 101-41.4901-1131, 101-41.4901-1131-A, 101-41.4901-1131-B, 101-41.4901-1132, 101-41.4901-1133, and 101-41.4901-1134 are removed.

Dated: March 13, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-9543 Filed 4-9-84; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order 6529

[C-28654]

Colorado; Partial Modification of Powersite Classification No. 932

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies Powersite Classification No. 392 insofar as it affects 37.23 acres of public land. This modification will open the land to private exchange subject to the provisions of section 24 of the Federal Power Act. The land remains closed to other forms of surface entry. It has been and remains open to mining and to mineral leasing.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTRACT: Richard D. Tate, Colorado State Office, 303-837-2592.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and the determination of the Federal Energy Regulatory Commission by DA-518-Colorado, it is ordered as follows:

1. The U.S. Geological Survey Order of July 29, 1948, creating Powersite Classification No. 392 is hereby modified to permit disposal by exchange subject to the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), as to the following described land:

Ute Principal Meridian

T. 1 S., R. 1 W.,
Sec. 36, lot 10.

The area described contains 37.23 acres in Mesa County.

2. Effective immediately, subject to valid existing rights, the land shall be available for exchange under section 206 of the Federal Land Policy and Management Act (90 Stat. 2756; 43 U.S.C. 1716), subject to section 24 of the Federal Power Act.

3. The State of Colorado has waived its rights to select the land for highway rights-of-way or material sites as provided by the Federal Power Act.

The land has been and remains open to applications and offers under the mineral leasing lands and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621).

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Dated: April 2, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-9598 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act; Exempt Record System

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Office for Civil Rights of the Department of Health and Human Services maintains a system of records entitled "Complaint Files and Log. HHS/OS/OCR." The Department is exempting this system from certain provisions of the Privacy Act, 5 U.S.C. 552a. The exemption is authorized by subsection (k)(2) of the Privacy Act, which applies to investigative materials compiled for law enforcement purposes. The Office for Civil Rights (OCR) is authorized to gather information for civil and administrative law enforcement purposes pursuant to several statutes requiring nondiscrimination in programs or activities receiving Federal financial assistance. In order to maintain the integrity of the OCR investigative process and to assure that OCR will be able to obtain access to complete and accurate information, the Department is exempting this system, under subsection (k)(2), from the notification, access, correction and amendment provisions of the Privacy Act.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Velez, Office of Policy and Special Projects, Office for Civil Rights, Department of Health and Human Services, Room 5410 North Building, 330 Independence Avenue SW.,

Washington, D.C., 20201, telephone (202) 472-4256. (TTY No. 202-472-2916)

SUPPLEMENTARY INFORMATION: The Office for Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964, (nondiscrimination on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of handicap), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age), and other statutes which prohibit discrimination in programs or activities which receive Federal financial assistance. This responsibility includes investigation of discrimination complaints filed against recipients of Federal financial assistance.

Under the Privacy Act, individuals generally have a right to access to information pertaining to them in government files. However, the Act permits agencies, by regulation, to exempt from the general access provision records which are investigative material compiled for law enforcement purposes. This exemption is qualified in that if the material results in the denial of any right, privilege, or benefit to the individual, the individual will have access to the material (except to the extent necessary to protect confidential sources).

OCR investigative files are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases it is necessary for OCR to preserve the confidentiality of this information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of the investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Department is exempting this system, under subsection (k)(2) of the Privacy Act, from the notification, access, correction and amendment provisions of the Privacy Act.

The final rule is identical to the proposed rule published at 48 FR 37440 (August 18, 1983). The Department received no comments during the 60-day public comment period provided by the notice of proposed rulemaking.

This rule does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory impact analysis is required.

The Secretary certifies that this rule will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: February 8, 1984.

Approved:

Margaret M. Heckler,

Secretary.

For the reasons set out in the preamble the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, are amended as follows:

PART 5b—PRIVACY ACT REGULATIONS

By adding paragraph (b)(2)(ii)(E) as follows:

§ 5b.11 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(E) Complaint Files and Log. HHS/OS/OCR.

* * * * *

[FR Doc. 84-9501 Filed 4-9-84; 8:45 am]

BILLING CODE 4150-04-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule; Amendments to general program regulations.

SUMMARY: The Institute of Museum Services issues amendments to regulations relating to certain of its programs of Federal financial assistance. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Special Projects Support programs for museums for Fiscal Year 1984.

EFFECTIVE DATE: These amendments are effective April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Michele Rossi, Confidential Assistant to the Director, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506. (786-0536.).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980.

The purpose of the Act is stated in Section 202 as follows:

> It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic and scientific heritage,and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational and cultural resources of the United States; and of the general public. In addition to the members appointed by the President, the following serve as members of the Board: the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Secretary of Education. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Fub. L. 97-100, December

23, 1981, Pub. L. 97–394, December 30, 1982.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public and providing education programs to the public. Other activities are designed to aid museums in developing and maintaining professionally trained staff, developing and carrying out specialized museum programs for specific segments of the public, and cooperating with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan. Assisting museums to carry out conservation activities is expressly authorized in the Act.

2. Need for Amendments

IMS regulations for the IMS General Operating Support (GOS) and Special Project Support (SP) programs were last published in June of 1983 (48 FR 27727). Amendments to these regulations are needed in order to implement provisions in the Fiscal Year (FY) 1984 appropriations legislation relating to these programs and to implement policy directions of the Board with respect to these programs for FY 1984 given at the Board's meetings of October 14 and December 9, 1983. The amendments fall into the following categories:

- A change in the regulations relating to eligibility for participation in IMS programs which is designed to reflect a provision in the FY 1984 Appropriation Act.
- Changes designed to clarify the applicability of certain provisions of the regulations to group applications or to relieve group applicants from limitations contained in the regulations.
- Changes designed to conform the regulations to revisions made in the application package as the result of Board consideration.
- Establishment of priorities for Special Project Support for FY 1984 growing out of Board consideration of the Special Projects program in light of prior experience.
- Other clarifying changes designed to meet particular concerns of museums expressed through members of the Board.

3. Amendment by Amendment Analysis

(a) Amendment No. 1 is designed to relieve applicants participating in a group application for a Special Project grant from the provisions in the regulations which prevent a museum from receiving both a Special Project grant and a General Operating Support grant in the same fiscal year (§ 1180.5(e)). The Board believes that the current provision (§ 1180.5(e)) may discourage the submission of potentially promising Special Project applications. This amendment is one of a number designed to encourage collaborative Special Projects from museums.

(b) Amendment No. 2 is designed to implement a statutory provision in the Department of the Interior and Related Agencies Appropriations Act, 1984, (Pub. L. No. 98–146) which precludes the establishment of IMS regulations which prohibit grants to any institution which is a recipient of a challenge grant from the National Endowment for the Arts or the National Endowment for the Humanities.

IMS regards this legislation as precluding the applicability of § 1180.5(g) (relating to receipt of Challenge Grants) to IMS grants made from FY 1984 funds. (IMS does not interpret this legislation as affecting the applicability of § 1180.5(g) to IMS grants made with FY 1983 funds.)

(c) Amendment No. 3 is designed to clarify the activities for which Special Project grants may be made. The amendment would change the regulations to indicate that conservation projects may *not* be assisted in FY 1984 with the portion of the appropriation earmarked for Special Project grants because another portion of the Fiscal Year 1984 appropriation has been earmarked for conservation projects. IMS believes that proposed conservation projects should be considered in connection with the competition for grants from that portion of the appropriation under guidelines and standards specifically developed for that competition. Clarifying language would also be added to reflect the availability of Special Project funds for programs or projects to serve the handicapped.

(d) Amendment No. 4 is designed to clarify the type of opinion which must be offered by an audit organization which provides an audited financial statement under § 1180.11(c) of the regulations for a museum which uses a cash basis of accounting. The amendment was suggested by a member of the Board at the October 14 meeting based upon concerns expressed on behalf of museums in that category and was adopted by the Board at that time. The amendment is designed to provide regulatory relief for such museums while at the same time maintaining the Board's policies with respect to the submission of financial information by applicants.

(e) Amendments No. 5 and No. 8 are designed to conform the regulations in § 1180.11(e) (relating to maintenance of effort) to the new GOS application package approved by the Board on October 14. The maintenance of effort requirement would no longer be an element in the review of an application but would be restated as a post-award condition and would be a matter involved in post-award review of grantee performance.

(f) Amendment No. 6 would restate the annual funding priorities for Special Project Support for FY 1984 in accordance with the policy direction of the Board under Section 206 of the Museum Services Act. For future fiscal years, priorities would be announced in annual program announcements published in the **Federal Register**. The priorities for FY 1984 were developed in connection with an extensive Board review of the Special Project program.

(g) Amendment No. 7, would clarify the applicability of § 1180.16(b) to group applications for Special Project support. In particular, a member of a group making a group application would not have to establish that the amount requested in the application was less than 10 percent of its individual nonfederal operating income. The amendment also makes a clarifying change in Section 1180.16(b) to conform to language in the revised application package approved by the Board.

4. Public participation

IMS has followed the practice of obtaining public participation in the development of its regulations and guidelines and has normally first published them in the form of a notice of proposed rulemaking inviting public comment. In the case of the instant amendments, this practice is not being followed. The amendments in question are designed to reflect statutory changes applicable to the programs made in the FY 1984 appropriations act; to clarify the applicability of current regulations to group applications; to clarify other provisions; or to implement policy directives of the Board providing relief to applicants from the applicability of certain provisions. To the extent that public participation would be appropriate, the public participation process could not be completed in time to permit orderly review of applications for General Operating Support and Special Project grants. The need of applicants for established final regulations in order to provide a clear frame of reference for application and the need of IMS to organize and convene panelists in addition to field

readers for certain programs preclude resort to this process for the current fiscal year. Thus, it is necessary that final regulations be in place promptly to support the conduct of the programs in question. Under these circumstances, it has been determined that resort to public participation procedures for the amendments in question is either not necessary or would be impracticable. See 5 U.S.C. 553(b).

5. Executive Order 12291

These amendments have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

6. Regulatory Flexibility Act Certification

The Director certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These amendments will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National boards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: March 19, 1984.

Susan Phillips,

Director, Institute of Museum Services.

Dated: April 2, 1984.

C. Douglas Dillon,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Part 1180 of Subchapter E of Chapter XI of Title 45 CFR of the Code of Federal Regulations by revising §§ 1180.5, 1180.8, 1180.11, 1180.12, and 1180.16, and by adding a new § 1180.18 as set forth below:

SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

PART 1180—GRANTS REGULATIONS

1. Section 1180.5(e) is revised to read as follows:

§ 1180.5 Eligibility and burden of proof—who may apply.

* * * * *

(e) A museum is ineligible to apply for or receive funding in any fiscal year for both Special Project and General Operating Support. Notwithstanding the preceding sentence, a museum which applies for a Special Project grant as one of a group of museums making a group application under § 1180.35 (relating to group applications) may also apply for a General Operating Support grant in the same fiscal year.

2. Section 1180.5 further revised by adding a new paragraph (i) to read as follows:

* * * * *

(i) Notwithstanding paragraph (g) of this section, in accordance with Pub. L. No. 98–146, no museum is ineligible to apply for or receive funds available under the Act for Fiscal Year 1984 because of its application for, or receipt of, a Challenge Grant.

3. In § 1180.8 paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 1180.8 Special Project Support.

(a) * * *

(4) Conserve artifacts, objects, plants and animals, except that, for Fiscal Year 1984, IMS does not make grants in the Special Projects category under this section for conservation projects. Section 1180.29(c) defines the term "conservation" for this purpose;

(5) Develop and carry out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions and programs to serve the handicapped;

* * * * *

4. Section 1180.11(c)(2) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

(2)(i) Every applicant which has previously received an IMS award must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year, prepared by an individual or organization meeting the qualifications of the Comptroller General of the United States for individuals or organizations conducting Government audits. Reference is made to GAO, *Standards for Audit of Governmental Organizations, Programs and Functions* (1981 revision).

(ii) In the case of a museum which does not use cash basis accounting, the individual or organization performing the audit must offer an opinion that the financial statement of the museum presents fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles. In the case of a museum which uses cash basis accounting, the individual or organization performing the audit must offer an opinion that the statement presents fairly (A) revenues collected and expenditures made and (B), where a balance sheet is involved, the assets, liabilities, and fund balances of the museum arising from cash transactions.

* * * * *

5. Section 1180.11(e), *Maintenance of effort* is removed. See amendment no. 8.

6. Section 1180.12(b) is revised to read as follows:

§ 1180.12. How applications are judged; priorities.

* * * * *

(b) The Institute annually sets priorities for Special Project applications and publishes these priorities in the **Federal Register** with the program announcement. The Institute particularly invites applications for Fiscal Year 1984 in the following areas:

(1) Projects to develop and carry out educational programs including cooperative education programs between museums and school boards, schools, or other public or private nonprofit educational institutions;

(2) Projects involving cooperative endeavors and collaboration among groups of museums;

(3) Projects to develop and maintain professionally trained or otherwise experienced staff;

(4) Projects to obtain outside expert assistance to enable a museum to carry out its functions or to provide expert assistance to other museums; and

(5) Projects to improve the management capacity of a museum such as projects involving innovative uses of electronic data processing.

* * * * *

7. Section 1180.16(b) is revised to read as follows:

§ 1180.16 IMS share of the cost of a proposal.

* * * * *

(b)(1) Subject to § 1180.9(a), IMS normally does not make grants for more than 10 percent (or $5,000 whichever is greater), of a museum's most recently completed fiscal year's non-federal operating income. For future fiscal years a different figure may be specified by notice published in the **Federal Register**. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of volunteer services contributed in the most recently completed fiscal year.

(2) Notwithstanding paragraph (b)(1) of this section, in the case of an application by a group of museums under § 1180.35 for Special Project assistance, a grant may be made without regard to the percentage which the grant represents of the individual non-federal operating income of any museum in the group. *Example:* Museum A, B, and C apply under a group application for a $50,000 Special Project. Museum A's non-federal operating income is $60,000. If it applied alone, Museum A could not expect a grant for more than $6,000. Nevertheless, it may participate in the group application.

* * * * *

8. A new § 1180.18 is added to read as follows:

§ 1180.18 Maintenance of effort.

A grantee must be able to demonstrate a continuing effort to maintain or increase its base of financial support during the fiscal year for which it receives a grant from IMS. A grantee successfully demonstrates maintenance of effort if its non-federal operating income during the fiscal year of its award is at least equal to its non-federal operating income for its immediately preceding fiscal year.

(20 U.S.C. 961–68)

[FR Doc. 84–9329 Filed 4–9–84; 8:45 am]
BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80–286]

Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Deferral of Effective Date.

SUMMARY: The Commission defers the existing effective date of April 3, 1984, for previously adopted changes in the rules for jurisdictional separations to June 13, 1984. This is necessary because the effective date of the access charge tariffs has been extended to June 13, 1984. This action will allow the separations changes and the access charge tariffs to go into effect on the same date.

DATES: The deferral of the effective date is to take effect April 2, 1984. The separations changes will now go into effect June 13, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo of the Common Carrier Bureau at (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 67 of the Commission's rules and establishment of a joint board, [CC Docket No. 80–286].

Adopted: March 29, 1984.
Released: April 2, 1984.
By the Commission.

1. On December 1, 1983, the Commission adopted revisions in the procedures governing the allocation of telephone company plant costs between the federal and state jurisdictions. *Amendment of Part 67,* 49 FR 7934 (March 2, 1984). These changes in the jurisdictional separations rules were set to become effective on April 3, 1984 at the same time as the access charge tariffs. *Id.* at para. 75. The Commission recently deferred until June 13, 1984, the effective date of the access charge tariffs filed in mid-March by the National Exchange Carrier Association (NECA) and the individual exchange carriers. News Release "Effective Date for Access Service Tariffs Extended," CC Docket No. 83–1145, Phase I, Report No. 17907, released March 21, 1984. In order to avoid the need for separate tariff filings to reflect the changes in the jurisdictional separations procedures, we are deferring the effective date of the revisions in Part 67 of the Commission's rules to June 13, 1984.[1]

2. Accordingly, it is ordered, That the effective date for the changes in the jurisdictional separations procedures discussed above is deferred to June 13, 1984.[2]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–9488 Filed 4–9–84; 8:45 am]
BILLING CODE 6712–01–M

[1] The Commission will complete its review of the access charge tariffs expeditiously, and if possible, permit the tariffs to become effective, in whole or in part, prior to June 13, 1984. This may necessitate further changes in the effective date of the revised separations rules.

[2] This action is taken pursuant to sections 1, 4(i), 4(j), 221(c), and 410(c) of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 221(c) and 410(c) (1976).

Proposed Rules

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Crediting for Marketing Promotion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the creditable marketing promotion provisions of the administrative rules and regulations established under the Federal marketing order for California almonds. The change would increase the credit handlers of California almonds may receive for advertising almond butter against their pro rata expense assessment abligations. The change is designed to encourage the expansion of almond butter markets.

DATE: Comments must be received by April 25, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, Room 1077, South Buidling, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposed rule has ben reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Frank M. Grasberger has determined that this proposal should be published with less than a 30-day comment period. The change would relax restrictions on handlers, and handlers should have the opportunity to utilize that increased flexibility as soon as possible.

This proposal would revise § 981.441(c)(3)(iv) of Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474; 48 FR 11249). This subpart is issued under the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board", which works with USDA in administering the order.

Section 981.441(c)(3)(iv) currently provides that handlers may receive credit for advertising almond products against their pro rata expense assessment obligations. The amount of such credit shall be the lesser of 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's actual payment. Section 981.441(c)(3)(iv) also stipulates that creditable almond products must not contain nuts other than almonds, must contain at least 50 percent raw shelled almonds by weight, and must display the handler's brand.

The proposal is to change § 981.441(c)(3)(iv) by increasing the amount of credit handlers could receive for advertising one specific almond product almond butter. The change would allow handlers to receive credit for almond butter advertising equal to the lesser of 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's actual payment. For the handler to receive credit, the almond butter would be required to meet the specifications contained in § 981.466 of the order, and the handler would be required to display his brand on the product.

The Board is currently involved in an ongoing project to use reserve almonds to develop a permanent market for almond butter. The Board hopes that, in time, the almond butter market will absorb a large quantity of almonds in the face of anticipated larger crops. This proposed change should help to develop that market by encouraging handlers to advertise almond butter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—[AMENDED]

Therefore, it is proposed to revise § 981.441(c)(3)(iv) of Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474; 48 FR 11249) as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(iv) When almond products, other than almond butter, are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's payment thereof, whichever is less: *Provided,* That (A) the almond product does not contain nuts other than almonds, (B) The almond product contains at least 50 percent raw shelled almonds by weight, and (C) the almond product displays the handler's brand. With respect to almond butter advertising, the credit shall be 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's payment thereof, whichever is less. For the handler to receive credit, the almond butter must meet the specifications contained in § 981.466, and the handler's brand must be displayed.

* * * * *

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

Dated: April 4, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-9545 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 234, and 235

[Docket No. R-84-1094; FR-1590]

Second Mortgages or Liens on FHA-Insured Mortgages; Escrow Accounts Associated With Interest Buy-Downs

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would expand the current permissible use of secondary financing in connection with HUD-insured, unsubsidized single family mortgages. Existing regulations permit the execution of a second mortgage only if the loan is made, insured or held by a Federal, State or local agency or instrumentality. The proposed rule would specify circumstances under which a second lien could be held by non-governmental entities or an inferior mortgage could be executed to secure funds advanced by the seller of a property to "buy down" the interest rate on the first mortgage. These changes are expected to increase homeownership opportunities for low- and moderate-income persons.

DATES: Comments must be received by June 10, 1984.

ADDRESS: Interested parties are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments should refer to the docket number and date of publication of the rule. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Room 9270, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Secondary Mortgages. Current HUD policy permits FHA mortgage insurance on a first mortgage loan secured by a one- to four-family property with a second mortgage only if the second mortgage or loan is made, insured, or held by a Federal, State, or local government agency. This rule would broaden HUD's policy on second mortgages. As home values continue to escalate, the goal of homeownership is becoming more difficult to achieve, especially homeownership by low- and moderate-income families. HUD believes that the use of secondary financing, in conjunction with FHA insurance of a first mortgage, for the purchase of a one- to four-family home, a cooperative apartment or a condominium can further the goal of homeownership by low- and moderate-income families.

The proposed rule contains a number of features designed to protect both the borrower and the Department. Thus, a second mortgage could be given to a mortgagee other than a Federal, State or local government agency only if (1) the first and second mortgages together do not exceed HUD's applicable maximum loan-to-value ratio and the maximum mortgage amount for the area, (2) the sum of required payments under the insured first mortgage and the second mortgage is not more than the mortgagor's reasonable ability to pay as determined by the Federal Housing Commissioner, (3) the second mortgage does not require a balloon payment before ten years, (4) any periodic payments made under the second mortgage are made on a monthly basis and are substantially the same in amount, (5) the interest rate on the second mortgage does not exceed the rate on the insured first mortgage, and (6) the borrower is permitted to prepay the second mortgage without penalty. Existing regulations which require a mortgagor to establish the adequacy and stability of the mortgagor's income to meet the required payments are retained without change.

The only limitation the existing regulations impose on government-related second liens is that the sum of the first and second mortgages must not exceed the mortgagor's reasonable ability to pay. The Department is considering changing this policy to extend most of the restrictions proposed in this rule on secondary financing provided by nongovernmental entities to second mortgages provided by governmental entities. The only restriction that the Department is not considering imposing on governmental entities is contained in § 203.32(c)(4) of this rule, which would subject the sum of the first and second liens to applicable loan-to-value ratios and maximum insurable amounts for the area. The Department particularily solicits comments concerning this issue, and, if appropriate, the final rule will include amendments dealing with secondary financing provided by both governmental and nongovernmental entities.

Escrow Accounts with Interest Buy-Downs. The Department is also revising its policy on the use of interest buy-downs. In an interest buy-down transaction, the seller places funds in escrow, with instructions to release a certain amount each month to the servicing mortgagee to reduce the monthly interest charged on the first mortgage to the buyer during the early years of the mortgage loan. Historically, the Department would consider any gift or monetary contribution by the seller to the buyer to be an "inducement to purchase" the property and, therefore, would reduce the acquisition cost to the buyer by the amount of the escrow. This would reduce the maximum amount of the insured mortgage. Recently, the Department modified its policy and determined that such a transfer, since it is not available as cash or the equivalent to the purchaser at the time of closing, need not be considered as an "inducement to purchase" the property. HUD no longer reduces the acquisition cost in instances where a seller or other interested party deposits money into an escrow account for an interest buy-down. This change in policy is reflected in an amendment to Handbook 4155.1 REV (Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Family Properties).

The interest buy-down mechanism provides a significant benefit to prospective homebuyers because it reduces a borrower's monthly payments in the early years of the mortgage. However, many sellers are unable to assist homebuyers without an expectation of future repayment of the interest buy-down funds. The proposed rule would permit an FHA-insured mortgage on a property that has a junior (second or third) mortgage that secures a mortgagor's obligation to repay the funds advanced by a seller for an interest buy-down. Since mortgages to secure interest buy-down repayments would be permitted only under limited circumstances, the sum of the insured mortgage and such a mortgage (unlike general second mortgages contemplated by this rule) may exceed the applicable maximum loan-to-value ratios established for insured mortgages (but not the applicable maximum mortgage limits). However, no payments could be required under these mortgages until the property secured by the mortgage is sold, or the insured mortgage is refinanced. Also, the total amount of any required repayments could not exceed the least of (1) one-half of the mortgagor's equity in the property at the

time of sale or refinancing, (2) three times the amount of the buy-down funds advanced or (3) the sum of the original loan amount and the total accrued interest on the junior mortgage at the time of repayment.

The Department does not believe it is appropriate to apply these new secondary mortgage policies to the subsidized homeownership program under section 235 of the National Housing Act. Accordingly, the rule contains a technical amendment to Part 235 that has the effect of continuing to permit only secondary mortgages held by governmental entities in the section 235 program. The revised policies are made applicable to the Department's other single family insuring authorities through amendments to Part 203 (1–4 family units), Part 213 (cooperative units) and Part 234 (condominium units).

Findings and certifications. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

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

This rule is listed at 48 FR 47432 under agenda number H–84–82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the program, as listed in the Catalog of Federal Domestic Assistance, affected by this regulation change.

Section 203(b)
=14.117 Mortgage Insurance—Home
=14.118 Mortgage Insurance—Homes for Certified Veterans
Section 213(b)=14.126 Mortgage Insurance—Management Type Cooperative Projects
Section 234(c)=14.133 Mortgage Insurance—Purchase of Units in Condominiums
Section 245 (a) and (b)=14.159 Section 245 Graduated Payment Mortgage Program

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not a significant economic impact on a substantial number of small entities. While the rule will provide a benefit to buyers and sellers of single family housing, some of whom may constitute small entities, it is not expected that the economic impact of the rule on them will be significant.

Lists of Subjects

24 CFR Part 203

Home improvement, loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, grant programs: housing and community development.

Accordingly, 24 CFR Parts 203, 213, 234 and 235 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. In § 203.32, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 203.32 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local government agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage in the early years following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provison permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third morgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

2. In § 213.520, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 213.520 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the morgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgage property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments in the early years following the date the mortgage is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payments of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. In § 234.55, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 234.55 Mortgage lien.

(a) Except as otherwise provided in of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and are substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments in the early years following the date the mortgage is insured, provided that:

(i) The junior mortgage shall not provide for any payments of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) the total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) three times the amount of funds advanced to effect the interest rate by-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

4. In § 235.1(a), add in numerical order the following section heading:

§ 235.1 Cross-reference.

(a) * * *

203.32 Mortgage lien.

* * * * *

5. A new § 235.32 is added, to read as follows:

§ 235.32 Mortgage lien.

(a) Except as provided in paragraph (b) of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With prior approval of the Secretary, the mortgaged property may be subject to a second mortgage made or insured, or other secondary lien held, by a Federal, State or local government agency or instrumentality. However, the required monthly payments under the insured mortgage and the second mortgage or lien shall not exceed the mortgagor's reasonable ability to pay, as determined by the Secretary.

Authority: Section 211, National Housing Act (12 U.S.C., 1715(b)); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 19, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-9504 Filed 4-9-84; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910

[Docket No. H-033C]

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: On November 4, 1983, the Occupational Safety and Health Administration (OSHA) published an Emergency Temporary Standard (ETS) which amended OSHA's present standard regulating occupational exposure to asbestos, 29 CFR 1910.1001 (48 FR 51085). This supplemental proposal together with the November 4 **Federal Register** notice constitute proposed revisions to OSHA's permanent standard regulating occupational exposure to asbestos in all industries covered by the Act, including general industry, the maritime industry and the construction industry. The basis for this supplemental proposal is OSHA's determination that employees exposed to asbestos face a significant risk to their health and that the proposed permanent standard will substantially reduce that risk. This notice proposes two alternative permissible exposure limites: 0.2 fibers (5 micrometers or longer) per cubic centimeter of air as an eight hour time-weighted average (0.2 f/cc), or 0.5 fibers (5 micrometers or longer) per cubic centimeter of air as an eight hour time-weighted average (0.5 f/cc). Other changes such as the definition of asbestos are also being considered. OSHA also solicits comments, data and information concerning specific changes to requirements affecting the construction industry. This notice schedules an informal rulemaking hearing concerning this proposal and the other revisions proposed by the ETS.

DATES: Notices of intent to appear at the informal rulemaking hearing must be received on or before May 10, 1984. Comments concerning the proposed revisions to the asbestos standard including changes proposed by the ETS must be received on or before May 25, 1984. Parties requesting more than 10 minutes for their presentations at the hearings, and parties submitting documentary evidence at the hearings shall submit the full text of their testimony and all documentary evidence which must be received no later than May 25, 1984. The informal rulemaking hearing will begin at 10:00 a.m., June 19, 1984, in the Auditorium, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

ADDRESSES: Written comments should be submitted to the Docket Officer, Docket No. H-033C, Room S-6212, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210. Notices of intent to appear at the informal rulemaking hearing, testimony and documentary evidence should be sent in quadruplicate to: Mr. Thomas P. Hall, OSHA Division of Consumer Affairs, Docket No. H-033C, Room N-3662, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210; telephone (202) 523-7177.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Asbestos and Health
III. Pertinent Legal Authority
IV. Regulatory History
V. The Assessment of Asbestos Risk and Determination of Its "Significance"
VI. Summary and Explanation of the Proposed Amendments and Other Issues Relevant to the Permanent Standard
A. Issues Relating to Provisions of The Present Asbestos Standard
B. Other Issues Concerning The Construction
VII. Regulatory Analysis
VIII. Environmental Impact
IX. Public Participation and Notice of Public Hearing
X. Authority and signature
XI. Regulatory Text

I. Introduction

Pursuant to sections 6(b), 6(c), and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1596, 1599; 29 U.S.C. 655, 657), the Construction Safety Act (Pub. L. 91–54; 40 U.S.C. 333), the Longshoremen's and Harbor Workers Compensation Act (33 U.S.C. 941), the Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, this notice hereby proposes to amend and revise the current asbestos standard, 29 CFR 1910.1001. This proposal follows publication of an Emergency Temporary Standard (ETS) on November 4, 1983 (48 FR 51085).[1] The Notice published on November 4, 1983 also serves as a proposal for this rulemaking and is incorporated by reference in this document.

These proposed revisions to the permanent standard apply to all workplaces covered by the Act, including "general industry", construction and maritime. An earlier notice of proposed rulemaking, published on October 9, 1975 (40 FR 47652) excluded the constuction industry. Because of this fact and because of additional requirements imposed by the United States Supreme Court in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 601 (1980), the earlier notice of proposed rulemaking is hereby withdrawn and replaced with this notice of proposed rulemaking.

OSHA believes that employees exposed to asbestos at the previous 2 f/cc time-weighted average PEL face a significant risk to their health and that the proposed standard would substantially reduce that risk. OSHA also believes that a significant risk remains at exposures to the proposed alternative PELs. Recent available evidence indicates that either 0.2 f/cc or 0.5 f/cc is an appropriate limit to propose when considering the available information regarding feasiblity limitations, particularly regarding asbestos measurement accuracy at low levels.

The preliminary regulatory analysis prepared by OSHA pursuant to Executive Order 12291 explores the feasibility of meeting three possible permissible exposure limits, 0.5 f/cc, 0.2 f/cc and 0.1 f/cc. At the conclusion of this rulemaking, OSHA will adopt a PEL reflecting the record evidence concerning health risk and technical and economic feasibility and which may, therefore, be higher or lower than the limits proposed.

OSHA has consulted with the Environmental Protection Agency (EPA) concerning this proposal and other asbestos-related areas of common concern. EPA has reviewed and critiqued OSHA's asbestos risk assessment (Ex 84–292, Ex 86–6). In addition, both EPA and OSHA are initial members, along with the Consumer Product Safety Commission (CPSC), of the Federal Asbestos Task Force, established in June, 1983. The primary purpose of the Task Force is to develop a unified federal approach for the regulation of asbestos and to coordinate future actions by the participating agencies. To date, these agencies have participated in committee meetings concerning exposure assessment and health hazards of asbestos and will continue along with representatives of other interested federal agencies to coordinate their efforts with respect to asbestos regulation.

OSHA requests the widest public participation and submission of written comments, data, and other evidence from interested persons on all the issues addressed in the proposal, including the appropriate permissible exposure limits, the feasibility of the proposed limit, and any other possible exposure limits that should be considered by OSHA. In addition, this notice requests comments on issues relating to the construction industry. This proposal schedules an informal hearing to provide further opportunity for discussion of the issues raised by the ETS and this proposal. After the hearing, OSHA intends to issue a final standard based on the full record of the evidence. OSHA plans to codify the asbestos standard, as it applies to the construction industry, in 29 CFR Part 1926. Some of the major issues raised in this proceeding include the following:

1. What exposure limits would provide protection of employees against known and suspected workplace hazards of asbestos and what feasibility limitations exist in setting any given limit;

2. Whether the permissible ceiling limit should be reduced and, if so, what the revised limits should be. What feasibility limitations exist;

3. To what extent, if any, should the standard be modified for workplaces which are of a nonfixed nature or otherwise engage a highly transient workforce, e.g., the construction industry;

4. Whether the changes in the definitions of "asbestos" and "asbestos fiber" would clarify the standard's intended scope, and properly relate to known or suspected workplace hazards; whether specifying the mineralogic definition of asbestos, such as using the term "tremolite asbestos" rather than the current term "tremolite," would better define the health hazard;

5. Wheter OSHA shoud modify the existing medical surveillance provisions (29 CFR 1910.1001(j)) to change the frequency of exams, their content, or otherwise;

6. Whether an expanded medical removal program should be provided where, as a result of the medical surveillance program, it is determined that an employee is at an increased risk of material impairment of health from further exposure to asbestos;

7. Whether and under what circumstances and conditions it is feasible to reliably measure asbestos concentrations at levels of 0.1 f/cc, 0.2 f/cc and 0.5 f/cc;

8. Whether the evidence associating asbestos exposure with the following health effects is adequate and whether OSHA's assessment of risk is scientifically valid:

a. Lung Cancer;

b. Mesothelioma;

c. Gastrointestinal Cancer;

d. Asbestosis; and

e. Other Malignant and Nonmalignant Diseases;

9. Whether a linear model should be used to extrapolate the risks of certified disabling asbestosis from lifetime exposure levels below 0.5 f/cc;, whether OSHA should quantify risks for other stages of asbestosis and if so how;

10. Whether OSHA's analysis of the evidence for carcinogenicity and toxicity differentials by asbestos fiber types is appropriate or whether regulatory distinctions should be made for different asbestos fiber types;

11. Whether OSHA should permit any method of compliance to reach the new permissible exposure limits after 2 f/cc has been achieved by use of engineering and work practice controls or whether it should require the use of engineering and work practice controls down to the PEL established in the final standard;

12. Whether proposed procedures for initial and subsequent exposure monitoring are adequate to reliably determine employee exposure to asbestos;

13. Whether provisions for regulated areas are reasonably necessary and appropriate for all covered industries;

14. Whether provisions for hygiene facilities are reasonably necessary and appropriate for all covered industries;

[1] On March 7, 1984 the United States Court of Appeals for the 5th Circuit determined the ETS to be invalid and stayed enforcement of the ETS.

15. Whether the standard should have a delayed effective date for any industry sector and, if so, the extent to which a phased schedule for compliance would be appropriate;

16. What are the environmental impacts of the proposal; and

17. Whether the provisions of the proposed standard are cost-effective and, if not, how can they be made cost-effective.

II. Asbestos and Health

Asbestos exposure can cause a number of disabling and fatal diseases. the discussion of the evidence found in the ETS concerning the health effects of occupational exposure to asbestos will not be repeated here (see 48 FR 51086 to 51133), but a brief overview of the data concerning asbestos-related disease is presented below.

Industrial and other human studies have conclusively shown the association between asbestos exposure and cancer in humans. Lung cancer risk is greatly increased in asbestos-exposed persons and mesothelioma (cancer of the lining of the pleural or peritoneal cavities) occurs almost exclusively in asbestos-exposed persons. The mechanisms by which exposure to asbestos leads to cancer are not known. Fiber length and diameter may be one of the determinants of carcinogenicity, according to the results of experimental studies. Although differences in chemical and physical properties among different fiber types have also been suggested as affecting the biological activity of asbestos fibers, all fiber types covered by the current standard are implicated in causing asbestos-related disease in humans. All asbestos fiber types appear to have an equivalent potency for causing lung cancer, the major cause of occupational mortality from asbestos exposure. OSHA believes that the evidence is more than adequate to support its determination that workers exposed at the currently permitted levels of exposure (i.e. 2 f/cc as a time-weighted average)—and even lower—face a significant risk of asbestos-related cancer and asbestosis and that the proposed standard will substantially reduce that risk.

As pointed out at 48 FR 51009, the types of disease associated with asbestos exposure are:

Cancer of the lung—The relationship between lung cancer and asbestos exposure has been conclusively established by numerous epidemiologic studies of diverse occupational groups. Lung cancer usually has a latency period in excess of 20 years following initial exposure to asbestos. Few cases of lung cancer are curable despite advances in medical and surgical oncology. Only 9% of lung cancer patients survive five or more years after diagnosis (American Cancer Society, 1983; Ex. 84–160). In addition, asbestos exposure acts synergistically with cigarette smoke to multiply the risk of developing lung cancer.

Mesothelioma—Mesothelioma, cancer of the lining of the pleura and peritoneum, also has been conclusively shown to result from asbestos exposure. Mesothelioma tumors are diffuse and spread rapidly throughout the cavity of origin. They are rarely curable and death usually results within a year of diagnosis.

Malignant mesotheliomas of the pleura and peritoneum are extremely rare in persons not exposed to asbestos. In some asbetos-exposed occupational groups, 10%–16% of deaths have been attributable to malignant mesotheliomas. Generally, a latency period of at least 15 years and often more than 30 years is required in order to observe mesotheliomas in an occupational group. Some victims of mesothelioma have had a latency period exceeding 40 years since their initial exposure to asbestos. There is no evidence for a relationship between cigarette smoking and mesothelioma risk.

Digestive System and Other Cancers—A number of epidemiologic studies of asbestos workers have observed increases in esophageal, stomach, colo-rectal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. While the magnitude of increased cancer risk for these sites is not as great as for lung cancer and mesothelioma, and the epidemiologic evidence is less consistent, the increased risk is nevertheless of considerable importance because of the high background rates for some of these tumors in the general population. For example, a 50% increase in the risk of a common cancer such as colo-rectal cancer results in many more excess deaths than a 50% increase in a rare cancer.

Other Chronic Effects of the Lung—Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Adverse effects of asbestosis range from shortness of breath upon exertion to cyanosis, effusions of serous fluid, respiratory failure, cardiac decompensation, and death. Asbestosis can be a progressive disease, even in the absence of continued exposure. Symptoms of the disease are shortness of breath, cough, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. Death results from the inability of the body to obtain requisite oxygen or from the heart's failure to pump blood through the scarred lungs. One clinical feature of early asbestosis, as well as other lung diseases, is end-inspiratory crackles (rales). Diagnosis of asbestosis is based upon the presence of characteristic radiologic changes, symptoms, rales, other clinical features of fibrotic lung disease and a history of exposure to asbestos.

The adverse health effects from exposure to asbestos have been observed consistently from occupational asbestos exposure and in many different occupational environments.

III. Pertinent Legal Authority

The primary purpose of the Occupational Safety and Health Act (29 U.S.C. 655 *et seq.*) (the Act) is to assure, so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is to mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials, or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. (Section 6(b)(5).

Where appropriate, the standards are required to include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations, and training and education. Moreover, where a standard prescribes medical examinations or other tests, they must be available at no cost to the employees (section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing

information regarding occupational accidents and illnesses (section 8(c)).

In vacating OSHA's revision to its benzene standard, the Supreme Court required in *Industrial Union Department, AFL–CIO* v. *American Petroloeum Institute*, 448 U.S. 601, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (1980), that before the issuance of a new or revised standard pursuant to section 6(b)(5) of the Act, OSHA must make two threshold findings. These are that a significant risk exists under the current standard and that the issuance of a standard would reduce or eliminate that risk. The Court stated:

> We agree * * * that section 3(8) requires the Secretary to find, as a threshold matter, that the toxic substance in question poses a significant health risk in the workplace and that a new, lower standard is therefore "reasonably necessary or appropriate to provide safe and healthful employment and places of employment." 448 U.S. 607 at 614–15; 65 L. Ed. 2d 1010 at 1018–19.

The Court also stated:

> * * * before he can promulgate any permanent health or safety standard, the Secretary [of Labor] is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices * * * (448 U.S. at 642, 65 L. Ed. 2d at 1035)

The decision, although it recognized the uncertainties involved, indicated that the determination of "significant risk" should, if at all possible, be established on the basis of an analysis of the best available evidence through such means as quantitative risk assessments. However, in making that determination, the Supreme Court in its general guidance for the future, noted that:

> * * * the requirement that a "significant" risk be identified is not a mathematical straitjacket. It is the Agency's responsibility to determine, in the first instance, what it considers to be a "significant risk". (448 U.S. at 655, 65 L. Ed. 2d at 1043)

It pointed out that while OSHA:

> must support its finding that a certain level of risk exists by substantial evidence, we recognize that its determination that a particular level of risk is "significant" will be based largely on policy considerations. (448 U.S. at 656, n. 62, 65 L. Ed. 2d at 1043, n.62)

Finally, the Court pointed out that:

> * * * OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty. Although the Agency's findings must be supported by substantial evidence * * * OSHA [has] some leeway where its findings must be made on the frontiers of scientific knowledge. (448 U.S. at 656, 65 L. Ed. 2d at 1043)

In the only concrete example of significance, the Court states:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take appropriate steps to decrease or eliminate it. id at 655, 656 L. Ed. 2d at 1043.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of heath * * *." (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasiblity. *American Textile manufacturers, Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981).

IV. Regulatory History

OSHA first regulated occupational exposures to asbestos in 1971 when it adopted a 12 f/cc limit pursuant to section 6(a) of the Act. In June 1972, OSHA promulgated the present standard which is found at 29 CFR 1910.1001 (37 FR 11318). This standard established an 8-hour time-weighted average permissible exposure limit (PEL) of 5 f/cc (with a ceiling limit of 10 f/cc), mandated a further reduction in the PEL to 2 f/cc effective July 1976 and contained other requirements such as exposure monitoring and medical surveillance. This standard promulgated in 1972 was based upon the determination that it would prevent asbestosis and possibly reduce the risk of cancer to an undefined extent.

In 1975, OSHA proposed to lower the PEL from 2.0 f/cc to 0.5 f/cc and the ceiling limit from 10 f/cc to 5 f/cc (40 FR 47652). This notice of proposed rulemaking was based on a review of the then available evidence which OSHA believed had now "accumulated to warrant the designation of asbestos as a human carcinogen". That notice, however, explicity excluded the construction industry. As pointed out above, this notice withdraws the earlier 1975 proposal. On November 4, 1983, OSHA published an ETS (48 FR 51086) which has been held invalid by the U.S. Circuit Court of Appeals in the Fifth Circuit on March 7, 1984.

V. The Assessment of Asbestos Risk and Determination of Its "Significance"

As discussed above, the Supreme Court in the benzene case (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* 448 U.S. 601 (1980)) ruled that prior to issuance of a new or revised standard regulating occuptional exposures to toxic materials, OSHA must make a determination that a "significant" risk exists and that the new standard will reduce or eliminate that risk.

OSHA believes that it is appropriate to consider a number of different factors in arriving at a determination of significant risk. The Court gave some general guidance as to the process to be followed. It recognized that while the Agency must support its finding with substantial evidence it also recognized that its determination that a particular level of risk is "significant" will be based largely on policy considerations (IUD v. API, 448 U.S. 655, 656, n. 62).

In a frequently quoted footnote, the Court suggested that determination of "significance" could be based on a quantative expression of the risk. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (I.U.D. v. API 448 U.S. at 655).

The Supreme Court's language indicates that the examples given were of excess risk over a lifetime. It speaks of "regular inhalation" which implies that it takes place over a substantial period of time and refers to the "odds * * * that a person will die". The Court indicated, however, that the significant risk determination required by the OSHA Act is "not a mathematical straitjacket," and "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." "A reviewing court (is) to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that) * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of

overprotection rather than underprotection (488 U.S. at 655, 656)."

OSHA has followed these guidelines in assessing the significance of the risk of material health impairment that results from asbestos exposure. OSHA's quantitative risk assessment concerning asbestos exposure is based on extensive evidence (Ex. 84–392). In large part, this assessment has impressive evidentiary weight because it relies upon studies of human worker populations and includes a variety of industrial situations, processes, and fiber types. Further, the predicted results of this quantitative assessment of risk at lower exposures are consistent with studies which observed excess risk at estimated or measured low cumulative exposures. The conclusion of significant risk is further supported by examining OSHA's weighing and interpretation of the quantitative estimates derived from the risk assessment. OSHA evaluated these data in the light of considerations such as the extent and kind of disease produced and the appropriateness of the models used to extrapolate risk. Finally, OSHA considered policy issues affecting the significant risk determination, such as comparison of the risk from asbestos exposure with other occupational risks; the regulatory treatment accorded to risks of similar magnitude and kind and the extent to which Congress and the public have expressed their concern with the risks resulting from asbestos exposure.

OSHA's risk estimates predict a risk of 64 excess cancer deaths (including lung, mesothelioma, and gastrointestinal cancer) per 1,000 workers exposed at the permissible exposure limit of 2 f/cc for 45 years, a working lifetime. Mesothelioma risk is predicted as 16 excess deaths per 1,000 workers exposed 45 years at 2 f/cc. Lung cancer risk is predicted as 44 excess deaths per 1,000 workers exposed 45 years to 2 f/cc. Excess deaths from gastrointestinal cancer are predicted as about 4 per 1,000 workers exposed to 2 f/cc for 45 years. (These estimates assume that the average age at initial occupational exposure is 25, as discussed in Ex. 84–392.)

OSHA also predicted the mortality from lung cancer, mesothelioma and gastrointestinal cancer at various potential PELs. In summary form, for a working lifetime of exposure, the estimates of lifetime risk are: 17 excess deaths per 1,000 workers at a 0.5 f/cc PEL, 7 excess deaths per 1,000 workers at a 0.2 f/cc PEL and 3 excess deaths per 1,000 workers at a 0.1 f/cc PEL. These estimates include only excess mortality from lung cancer, mesothelioma, and gastrointestinal cancer, and do not include excess mortality from asbestosis or other cancers. OSHA did not attempt to quantify the risk for cancer sites other than the lung, mesothelium and gastrointestinal tract. It should be noted that at all the reduced levels for which calculations were done, the residual excess cancer risks still exceed the Supreme Court's rough guideline of 1 per thousand lifetime risk of dying which was suggested as an example of a risk which a reasonable person might well consider significant.

OSHA has also estimated the risk of the incidence of asbestosis at the current permissible level of 2 f/cc. OSHA's best estimate is based on the results of a high quality study at an asbestos-cement factory in Ontario to determine the incidence of compensable (certified) asbestosis (Finkelstein, Ex. 84–240). A linear model using cumulative exposure was used to generate the risk estimated. OSHA estimated an incidence for asbestosis of approximately 50 per 1,000 workers exposed to 2 f/cc for 45 years.

For the risks associated with asbestos, OSHA believes the basis for determining "significance" at the 2 f/cc level and even lower is particularly strong. First, the underlying data upon which the quantitative risk assessment for asbestos is based are the results of high quality epidemiologic studies conducted in occupational environments. This gives OSHA great confidence that the estimates of risks derived from these studies are representative of actual workplace conditions. Second, OSHA emphasizes that the data bases for asbestos are of unusually high quality. More than most potential occupational carcinogens, asbestos has been studied often and thoroughly for evaluation of its effects on various occupational populations.

Third, the validity of the results of these studies is also underscored by the relatively consistent estimates of dose-response. The ranges of K_L (the potency factor for lung cancer risk—see Ex. 84–392 for a detailed explanation) as well as the ranges of K_M (for mesothelioma risk) derived from each study generally were overlapping. As described in the ETS, OSHA's best estimate of the potency factor K_L is 0.01, but an appropriate estimate of K_L could lie between 0.003 and 0.03. OSHA believes that the agreement is good among the K_L values considering the different statistical powers of the studies and the different types of workplaces studied. Similarly, a relatively narrow range (a factor of 10) represents the mesothelioma risk predicted by the four studies used to calculate K_M.

And finally, OSHA believes that it used the most appropriate models to calculate the risks. OSHA used a linear dose-response model in calculating the risks for lung cancer. OSHA believes this model is appropriate because dose-response information derived from several epidemiologic studies indicates that risk of asbestos-induced cancer increases linearly with total dose, including studies by Henderson and Enterline (1979, Ex. 84–048), Liddell et al. (1977, Ex. 84–059), and Dement et al (1983, Ex. 84–037). Further, OSHA notes that other scientists and scientific groups, such as Crump (Ex. 85–022), the Environmental Protection Agency (EPA) (Ex. 84–180) and the Chronic Hazard Advisory Panel on Asbestos of the Consumer Product Safety Commission (CHAP) (Ex. 84–256) and Acheson and Gardner of the British Advisory Committee on Asbestos (Ex. 84–243), have also chosen the linear model to predict lung cancer mortality due to asbestos exposure. Thus, OSHA's estimates of asbestos-related lung cancer risks appear to be very reasonable.

With regard to mesothelioma risk, OSHA believes that an absolute risk model provides the best means to estimate such risks. As explained by the preamble to the ETS, absolute risk for mesothelioma is calculated as observed deaths/person-years at risk (48 FR 51123). Because of the extreme rarity of the disease absent absestos exposure, use of Standardized Mortality Ratios (SMR's) is not appropriate for mesothelioma. (The SMR is calculated as the observed number of deaths in the exposed population divided by the number of deaths that would be expected in the exposed population. The expected number of deaths is derived from the mortality rate from a specific cause in an appropriate comparison population. The mortality rate from mesothelioma is close to zero in most populations against which asbestos workers have been compared.) This model is also different from that used for lung cancer because both duration of time since initial exposure and duration of exposure are more determinative of risk.

In sum, and as OSHA pointed out in the ETS, OSHA has estimated that at the present 2 f/cc level, employees exposed over a working lifetime of 45 years are predicted to have an excess risk of dying from cancer of 64 in 1000 and of contracting disabling and often fatal asbestosis of 50 in 1000. OSHA believes that each of these risks are significant and unacceptable. Risks at the 2 f/cc level have been acknowledged

as unacceptable by other governments (Ex. 84–378, 84–379), and they also are higher than other risks that OSHA has regulated or proposed to regulate in the past. For example, the risk to coke oven workers was estimated to be approximately 10 per 1,000 (48 FR 45975). The risk of byssinosis from cotton dust was estimated to be approximately 83 per 1,000 *(id.)*.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. (OSHA has also performed a feasibility study in the form of a Regulatory Impact Analysis document (Ex. 84–422). A summary is provided later in this notice.) OSHA believes that the proposed standard for asbestos will substantially reduce the very significant risk from exposure to asbestos at the permissible exposure limit of 2 f/cc.

VI. Summary and Explanation of the Proposed Amendments and Other Relevant Issues

A. Issues Relating to Provisions of the Present Asbestos Standard

As stated above, the ETS serves as a proposal for a permenent standard. The regulatory text found at the end of this document is similar to the regulatory text found at 48 FR 51085, including the PEL of 0.5 f/cc, except that the regulatory text proposed herein adds an alternative proposed PEL of 0.2 f/cc. The permanent standard may differ from this set of proposed provisions, depending upon the testimony and evidence received during the public rulemaking procedures. The following discussion concerns those issues covered by the asbestos ETS, such as how asbestos should be defined, which OSHA believes will differ in the final standard. This discussion also covers additional changes under consideration by OSHA pertaining to the protective provisions in the asbestos standard not contained in the ETS. These include, for example, provisions for regulated areas, change rooms and showering facilities.

A separate section discussing regulation of asbestos in the construction industry follows this section. This proposal, and the current asbestos standard cover all workplaces where asbestos-exposed workers are employed, including general industry, maritime and construction. However, OSHA is aware of questions that have been raised concerning the appropriateness to the construction industry of certain protective requirements in the current standard such as monitoring and medical surveillance. OSHA intends to review the applicability of each provision of the present standard to construction. OSHA plans to codify the asbestos standard, insofar as it relates to the construction industry, at 29 CFR Part 1926.

1. *Scope and Application.* This standard, as revised, would continue to apply to all workplaces where occupational exposures to asbestos are present. The proposed standard, as does the current permanent standard includes the construction industry. As discussed more fully below, OSHA anticipates the promulgation of a separate standard for the construction industry.

2. *Definitions.* The present standard, promulgated in 1972, defined "asbestos" as chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite and defined "asbestos fiber" as asbestos fibers longer than 5 micrometers. OSHA is considering the addition of the following language to the definition of "asbestos": "and every product containing any of these minerals and any of these minerals that has been chemically treated and/or altered." Also, OSHA may amend the definition of "asbestos fiber" to "a particulate form of asbestos, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1, and with a maximum diameter of 5 micrometers."

OSHA does not believe that this modified definition would alter the manner in which the current standard is now enforced but rather clarifies the standard where areas of uncertainty have arisen in the past. The term "and every product containing any of these minerals" is intended to recognize that, in most asbestos exposure conditions today, airborne asbestos fibers are mixed with other dusts. The standard requires however, that only asbestos fibers be counted and assessed for determining worker exposure, and no change to the standard should occur in practice as a result of this change in definition.

The new definition of "asbestos fiber" would be consistent with experimental studies in the record suggesting that the fiber diameter and length-to-diameter (aspect) ratios influence the degree of carcinogenicity of asbestos fibers. The maximum diameter of 5 micrometers is the appropriate limit of respirability for asbestos fibers. That is, fibers with diameters greater than 5 micrometers are too large to enter the portions of the lung where asbestos disease ocurs. Also, OSHA hopes that this maximum diameter may include the most carcinogenic fibers, although the potential carcinogenicity of fibers with diameters exceeding 5 micrometers cannot be definitely excluded.

The current and proposed fiber length of 5 micrometers or more is consistent with experimental studies of Stanton et al. indicating carcinogenicity for fibers of these lengths. The aspect ratio has been suggested as a factor in carcinogenesis by Bertrand and Pezerat, which is not unexpected since the ratio incorporates two potential determinants of carcinogenicity, namely length and diameter. In addition, the proposed definition, including length, diameter, and aspect ratio, is consistent with the definition used by epidemiologic and experimental studies. Moreover, since 1972, OSHA, NIOSH, and virtually all other laboratories have been using the parameters of the proposed definition, which ensure that the fibers being counted are both respirable and visible using phase contrast microscopy. This change would be a clarification of the present requirements for determining what constitutes asbestos fibers and would not actually change the present scope of the standard with regard to inclusion of various types of asbestos fibers.

As discussed in the preamble to the ETS, OSHA has historically taken the position that all of the minerals listed in the current asbestos definition, namely chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite constitute forms of asbestos and that all forms of asbestos pose a significant health risk to exposed workers (48 FR 51115).

Currently, OSHA defines asbestos (29 CFR 1910.1001(a)) as follows:

> For the purpose of this section, (1) "asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

OSHA's asbestos definition, differs from that taken by other governmental agencies. The Mine Safety and Health Administration, at 30 CFR 57.51(b) defines asbestos as follows:

> "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.

The Consumer Product Safety Commission, at 16 CFR 1304.3(b), defines asbestos this way:

> (b) "Asbestos" means a group of mineral fibers composed of hydrated silicates, oxygen, hydrogen, and other elements such as sodium, iron, magnesium, and calcium in diverse combinations and are: Amosite, chrysotile, crocidolite, anthophyllite asbestos, actinolite asbestos, and tremolite asbestos.

The Department of Education defines, at 34 CFR 230.10(b), asbestos as follows:

"Asbestos" means—

(a) Chrysotile, amosite, or crocidolite; or

(b) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

EPA defines, at 40 CFR 763.103, asbestos in the following way:

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

Therefore, OSHA appears to be the only governmental agency that regulates non-asbestiform tremolite as asbestos. Thus one commenter (Ex. 87–1) states that tremolitic talc is treated as asbestos by OSHA for enforcement and regulatory purposes. But, the commenter alleges, nonasbestiform tremolite is not regulated as asbestos by MSHA.

Such commenters basically state that the OSHA definition of asbestos is not consistent with the mineralogical definition of asbestos (Ex. 87–1). They state that there is a mineralogical difference between asbestiform fibers and nonasbestiform fibers of the same mineral type, and that these differences should be recognized in the OSHA asbestos definition. One scientist has suggested special provisions for counting asbestos present in talc, such as changing the optical microscopy technique to polarized light microscopy and a change in the fiber aspect ratio (Ex. 84–399).

Numerous studies have found that workers exposed to talc have an excess of non-malignant respiratory disease (listed in Ex. 84–181). In addition, several studies have reported an excess of respiratory system cancer (Exs. 84–181, 84–402, 84–141). See the discussion in 48 FR 5117, the asbestos ETS. Another consideration is that scientific data in the record indicate that a critical factor may be the morphology of the fiber, rather than its strict mineralogical designation (Ex. 84–93).

On the other hand, the evidence presented by proponents of adoption by OSHA of a mineralogic definition of asbestos which has the effect of excluding asbestos in talc is unrebutted from a mineralogic viewpoint (see Ex. 87–1).

Thus, OSHA anticipates it will adopt the mineralogic definition of asbestos advocated by the authors of the comments cited above. Of course, evidence presented in rebuttal to these comments, if any, and evidence resulting from cross examination will be considered in OSHA's final decision.

OSHA anticipates that it will change its definition by adding the adjective "asbestiform" in front of the nouns "tremolite, anthophyllite, and actinolite" in the current definition, or adopt similar language bring OSHA's definition into conformity with that of other federal agencies.

This change in definition would mean that mineral products such as tremolite in talc products that are now regulated as asbestos under the OSHA standard would no longer be specifically regulated under the asbestos standard. OSHA requests and encourages public comments on whether the mineralogic definition of asbestos fibers should be adopted in OSHA's definition for asbestos.

Another issue concerning the definition of asbestos is whether asbestos which has been chemically treated or altered should be regulated the same as untreated or unaltered asbestos. Some scientists have suggested that asbestos fibers have biochemically active sites on their surfaces that can be modified so as to reduce the hazardous potential of asbestos fibers (Ex. 84–333). In vitro tests (tests conducted on cells in test-tube simulations of living systems) have been conducted for normal asbestos fibers and chemically-treated asbestos fibers. Decreased toxicity of chemically-treated asbestos fibers compared to normal asbestos fibers has been reported (Ex. 84–333).

Despite these in vitro results, OSHA has reservations about the hypothesis that biochemically active sites on the surface of asbestos fibers determine the degree of carcinogenicity of the fibers. This is because many in vivo studies (studies of laboratory animals), especially those conducted by Stanton et al., have found that fiber dimensions rather than chemical properties appear to be the primary determinant of asbestos fiber carcinogenicity. Moreover, Stanton et al. found that a variety of non asbestos fibers could induce cancer if they were milled to specific dimensions. The results of the in vitro studies do not carry as much weight as the results of the in vivo studies because in vivo studies more closely approximate the human occupational situation. OSHA's compliance interpretation of the standard has been that chemically altered asbestos fibers are included within the scope of the current standard. OSHA believes that this interpretation should be retained, and is considering, therefore, adding specific language to clarify the definition of asbestos in this regard. Public comment is requested regarding whether asbestos that has been chemically treated and/or altered should be regulated to the same extent as other forms of asbestos.

3. *Permissible Exposure Limits (PEL).* (a) *8 Hour Time-Weighted Average.* The proposal provides for a permanent reduction in the permissible exposure limit to two alternative levels: eight (8) hour time-weighted average (TWA) of 0.2 f./cc or an 8 hour TWA of 0.5 f/cc.

In the ETS issued November 4, 1983, OSHA reduced the PEL from 2 f/cc to 0.5 f/cc. The 0.5 f/cc exposure limit in the ETS was based upon data in the record, which indicates, as noted in the ETS preamble, that although grave dangers to employees are posed by exposures at 0.5 f/cc, 0.5 f/cc was the lowest level attainable and measurable during the limited time frame of the ETS. OSHA has also found that a significant risk of material impairment to employee health exists at the current PEL of 2 f/cc and that at the proposed alternative limits, the risk is not eliminated. Because, therefore, significant risk exists at all reduced limits under consideration, OSHA's primary consideration for setting a PEL is whether the limit chosen is technically and economically feasible for the affected industries. Based on information in OSHA's Regulatory Analysis, OSHA believes that for most industries, 0.2 f/cc may be feasible.

Accuracy and precision of asbestos measurements is another feasibility issue. It appears that f/cc may be measured by most employers with sufficient accuracy using techniques that are available at this time, and protocols that have been published recently. For example, both the British government and NIOSH have published revised protocols which are claimed to increase the accuracy and reliability of the phase contract microscopy method to 0.2 f/cc and below (EX. 84–446, 84–444).

Some suggested provisions that would improve the accuracy and precision of asbestos measurement procedures and possible modifications to the standard are discussed in paragraph V. B. 12, below. OSHA may promulgate some or all of these provisions in the permanent standard.

OSHA anticipates that data and information will be submitted to the record in the course of this rulemaking as to what constitutes the lowest feasible level of exposure to asbestos in affected industries using various compliance strategies. It should be noted that the PEL in the final rule will likely be the most protective level which is feasible and which significantly reduces risk, based upon the entire record of the proceeding, and may differ in that regard from the proposed limits.

Another issue to be addressed in this rulemaking is whether different PEL's

should be established for the different fiber types. The United Kingdom has set different limits by fiber type (for example, 1.0 f/cc for chrysotile and 0.2 f/cc for crocidolite) due to suggestive evidence in humans that amphiboles, particularly crocidolite, cause mesothelioma more readily than other types. The EEC and the Province of Ontario, Canada, have adopted similar standards (Ex. 84–379, 84–223). In the November 4 notice, OSHAl concluded that fiber type is not an important determinant of lung cancer mortality arising from asbestos exposure. Lung cancer is the major cause of excess mortality among asbestos workers and potential for developing lung cancer constitutes a significant risk to exposed employees. Therefore, OSHA does not deem it appropriate to permit higher levels of exposure to chrysotile than to other asbestos fiber types on the basis of the possibility that chrysotile may induce fewer mesotheliomas than the amphiboles. OSHA is encouraged that the British have had success with the 0.2 f/cc limits for certain fiber types. OSHA requests comments on whether the scientific evidence is sufficient to support different exposure limits, perhaps to lower than the proposed PELs for some fiber types, and whether such reduced levels are feasible to attain.

OSHA welcomes any and all data available as to the appropriate permissible exposure limits for asbestos, the feasibility of the proposed exposure limits and any other exposure limits which should be considered by OSHA.

(b) *Ceiling Limit.* OSHA is maintaining the current provision that sets a ceiling limit of 10 f/cc (1910.1001 (b)(3)) to be achieved by engineering and work practice controls. OSHA is also considering a reduced ceiling limit of 3.0 f/cc for a 15-minute period if a TWA of 0.5 f/cc is established, as well as considering a reduced ceiling limit of 2.0 f/cc if a TWA of 0.2 f/cc is established. The reduced ceiling limit could be achieved by any combination of engineering controls, work practices and respiratory protection. The ceiling limit of 3.0 f/cc is 6 times higher than the proposed TWA of 0.5 f/cc and the ceiling limit of 2.0 f/cc is 10 times higher than the proposed TWA of 0.2 f/cc. In comparison, the current ceiling of 10 f/cc is 5 times higher than the TWA of 2.0 f/cc to be achieved by engineering controls. Based on its history of enforcing health standards, OSHA believes that this ceiling limit may be necessary to ensure further that employees are not exposed to dangerous concentration of asbestos fibers. Also, a revised provision to reduce the ceiling would provide an additional measurement benchmark for employers to assess the effectiveness of their compliance stategies, particularly engineering and work practice controls, and aid OSHA in enforcing the reduced PEL.

OSHA believes that the ceiling limit for asbestos has been an aid in the successful control of asbestos exposures under the past standard. Where OSHA standards for other toxic substances have contained a ceiling limit, similar favorable results with regard to controlling exposures have occurred. In addition, OSHA is not aware of special feasiblity problems concerning the ceiling limit for asbestos. Generally, the use of ceiling limits appears to enhance the protection provided by a standard.

Exposures to the ceiling concentrations under consideration are essentially equivalent to time weighted averages which appear to pose a significant health risk according to the results of OSHA's risk assessment (Ex. 84–392). Certainly the current ceiling of 10 f/cc, if measured over a 15 minute period, would exceed the TWA level at which a significant risk is found. Further, in very dusty atmospheres, short term measurements of asbestos may be a more reliable way to measure actual airborne concentrations.

As stated earlier in this document, OSHA has utilized cumulative exposures to assess the risk of asbestos-related disease and OSHA is not aware of evidence suggesting that intensity of exposure would affect carcinogenic risk in a manner separate from that of cumulative exposure. However, OSHA is aware that the mechanism of asbestos carcinogenesis is not known with any degree of certainty, and that it is possible that intensity may yet prove to be an independent critical variable in inducing cancer.

For example, in testimony before the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, Dr. William Nicholson of the Mt. Sinai Environmental Sciences Laboratory states that:

> The possibility is that intense exposures may overwhelm clearance mechanisms and thus you have more fibers retained in such circumstances (Ex. 85–8, p. 69).

Also, Dr. Jolian Peto testified to the Ontario Royal Commission that:

> Another possibility * * * is that, in fact, transient high exposures are in fact a major source of risk, and this hasn't been examined in proper detail (Ex. 85–21, p. 55).

If in fact high intensities of exposure is a variable independently related to asbestos-induced diseases, a ceiling limit is essential to protect worker health. The agency will evaluate the need to limit exposure excursions to 2.0 f/cc or another feasible ceiling level during this rulemaking. OSHA specifically requests the public to submit comments on revising the ceiling limit, either to the limit discussed above or to other suggested limits. Information concerning the feasibility of achieving such a limit, particularly in industries with variable exposures, is sought. Based on the information in the record at the conclusion of this rulemaking, OSHA will decide how to revise the current ceiling limit provision to appropriately protect exposed employees.

4. *Action Level.* For a TWA of 0.5 f/cc, OSHA is considering an action level of 0.2 f/cc to trigger certain requirements, such as exposure monitoring, regulated areas, hygiene facilities, protective clothing and medical surveillane requirements of the asbestos standard. For a TWA of 0.2 f/cc, OSHA is considering triggering these requirements at 0.2 f/cc. Except for medical surveillance and regulated areas, these requirements are now imposed at the current PEL of 2 f/cc. For medical surveillance, past administrative interpretation has resulted in an action level of 0.1 f/cc and no current requirement exists for regulated areas.

OSHA believes it is appropriate to begin protective actions at the 0.2 f/cc level because in the case of asbestos, significant health risks are likely to be present at that level and supplemental protective measures are clearly warranted. Moreover, as the Supreme Court noted in the benzene decision, the salutory nature of actions such as monitoring and medical surveillance exist independently of any exposure reduction.

Further, OSHA believes that explicitly prescribing a trigger level provides a cut-off point for many of the required compliance activities under the standard. The standard necessarily encompasses some employers who are required to perform initial monitoring to determine the extent of their employees's exposures to asbestos. If, on the basis of the results of the initial measurement, an employee's exposure is below 0.2 f/cc, the employer may discontinue monitoring and most other compliance activities concerning that employee. The trigger thus provides an objective means for an employer to determine what further actions are required for compliance with the standard.

The concept of triggering such actions below the PEL, i.e. an "action level", has been utilized successfully in past OSHA standards. Reasons for adopting an action level were pointed out by ORC: "[The action level] provides employees with an extra margin of safety, and assures employers of continued compliance with the PEL" (1983, Ex. 86–004, p.9). A basis for determining an action level below the PEL has been discussed in connection with several OSHA health standards (see, for example, the preamble to the inorganic arsenic standard (May 5, 1978, FR 19584)). In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above the action level, the employer cannot reasonably be confident that his employees may not be overexposed (Leidel, N.A., et. al., *Exposure Measurement, Action Level and Occupational Environmental Variability*. DHEW, PHS, DCD, NIOSH, DLICK (August 1975)). Therefore, requiring the periodic employee exposure measurements to begin at an action level below the PEL provides the employer with a reasonable degree of confidence in the results of his measurement program.

OSHA seeks comments on whether compliance activities such as medical surveillance, measurement and regulated areas should be triggered at 0.2 f/cc regardless of whether a 0.5 f/cc or 0.2 f/cc PEL is chosen. In discussing an action level for a 0.2 f/cc PEL, OSHA requests comments on whether measurement is sufficiently reliable below 0.2 f/cc such that prescribing an action level below 0.2 f/cc would be feasible. Can greater uncertainty in measurement be tolerated when the purpose of measurement is to trigger supplemental activities, not to measure exposure reduction? Also OSHA seeks comments on what supplemental activities should be triggered at an action level or at the PEL.

5. *Exposure Monitoring.* OSHA is considering the modification of the existing requirement for employer monitoring 29 CFR 1910.1001(f) to make it consistent with other OSHA standards and good industrial hygiene practice. For example, OSHA may require monitoring at the proposed PELs or at an action level rather than the current PEL of 2 f/cc. Other possible changes might be increasing monitoring frequency from every 6 months to every 3 months for those employees exposed above the PEL. Other monitoring frequencies are also being considered. OSHA requests data, information and comments concerning any changes that should be made in the monitoring provisions of the current asbestos standard.

6. *Regulated Areas.* The current standard does not require that regulated areas be established and access limited to authorized persons. Other OSHA standards that regulate exposure to toxic substances do contain such a provision; for example, 4-Nitrobiphenyl, 29 CFR 1910.1003; Arsenic, 29 CFR 1910.1018; Lead, 29 CFR 1910.1025; and Vinyl Chloride, 29 CFR 1910.1017. OSHA will evaluate the need for the revised asbestos standard to have such a provision as a result of this rulemaking. Regulated areas and limited access are intended to aid in limiting exposure to asbestos. The revised standard may require the employer to prevent those persons who are not authorized to enter the regulated area from doing so and thereby being exposed to asbestos. Other purposes of regulated areas are to designate those locations in which precautionary signs are posted, and to designate those employees subject to exposure monitoring. Additionally, when working in regulated areas certain activities may be prohibited, such as smoking and eating.

OSHA is considering the approach of establishing regulated areas at the proposed PELs or at an action level. OSHA requests comments on the need for a provision requiring the designation of regulated areas, the appropriate trigger, and activities that should be required or prohibited.

7. *Methods of Compliance.* OSHA is proposing to permit any feasible combination of engineering controls, work practices, and personal protective equipment to reduce exposures from 2 f/cc to the new PEL.

OSHA believes that it is appropriate to adopt a standard that will protect workers from material impairment of health by allowing all compliance strategies that achieve the performance of this goal. As stated by Section 6(b)(5) of the Act, "whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired." This suggests that so long as the worker health is protected, OSHA may state the methods of compliance requirement in terms of performance to be achieved, rather than prescribing specific compliance methods. As explained in the preamble to the recent proposal revising the standard for ethylene dibromide (48 FR 45956), OSHA recognizes that respirators may provide acceptable protection when an employer establishes stringent procedures concerning the use of respirators and then carefully supervises their implementation on a continuous basis.

OSHA is now reviewing its general policy relating to the use of engineering controls and respirators for airborne contaminants. Two advance notices of proposed rulemakings were published on May 14, 1982 (47 FR 20603) and February 22, 1983 (48 FR 7473) respectively, concerning the possible revision of two general standards, namely 29 CFR 1910.1000(e) (Air Contaminants) and 29 CFR 1910.134(a)(1) (Respiratory Protection). Although this process of review of OSHA's general policy concerning methods of compliance is underway, OSHA intends to consider the issue in this rulemaking as it specifically relates to asbestos, especially in the construction context.

OSHA recognizes many of the shortcomings of respirators that have been pointed out in past rulemakings. For that reason, engineering and work practice controls have been mandated by OSHA in individual standards as the required means of protecting employees from occupational carcinogens to the extent feasible. Respirators were permitted only after feasible engineering and work practice controls had been installed because evidence placed in the records of those individual rulemakings indicated that respirators may not provide a comprehensive and reliable method of employee protection from those hazards.

However, recently OSHA has received submissions from the public which endorse a more flexible compliance strategy. Thus, in response to the advance notice a proposed rulemaking concerning possible revision to OSHA's standards concerning methods of compliance for health standards (48 FR 7473) the Atlantic Richfield Company stated that "a revised policy that permits greater compliance flexibility will assure, in a more cost effective manner, the continuing high level of protection provided to our employees" (Dkt. No. 5–6212, Comment 2–80). Relatedly, the National Paint and Coating's Association, Inc. stated that "in many cases respirators will perform not just equally but better than engineering controls" (Comment 2–78). Because of the records in past rulemaking, OSHA is maintaining the existing provision in the asbestos standard that requires the employer to implement feasible engineering and work practice controls to achieve the 2 f/cc exposure limit (see

29 CFR 1910.1001(c). Under the provisions set out in this proposal the employer would be permitted the choice of control strategies to achieve the new PEL but only after implementing feasible engineering and work practice controls to meet the 2 f/cc exposure limit. Half-mask respirators (which provide the lowest degree of protection—see Table 1, *infra*) are generally recognized to provide a protection factor of 10, one component of measuring respirator effectiveness. Since reduction of exposure from 2 f/cc to o.2 f/cc amounts to a 10-fold decrease, use of half-mask respirators in this range should provide adequate protection in many such cases. To the extent that existing or additional engineering and work practice controls reduce the ambient exposures below 2 f/cc, but still above the new PEL, using respirators to achieve the new limit should be accomplished with increased effectiveness.

In addition, OSHA is considering promulgation of other provisions that may increase the respirator's performance. OSHA may require the employer to use quantitative fit tests to ensure that the respirators fit properly, or may adopt qualitative fit test procedures. An example of qualitative fit tests procedures that have been determined to be effective is that described in the lead standard (see 29 CFR 1910.1025 Appendix D). OSHA may require that the employer provide several sizes of respirator face pieces so the employee can choose the one that fits the best; and OSHA may require the employer to provide a powered air purifying respirator in appropriate circumstances. These provisions should improve proper employee use.

OSHA is considering requiring the use of high efficiency filters when air purifying type respirators are used. OHSA notes that at both proposed levels, 0.2 f/cc and 0.5 f/cc, the NIOSH/MSHA certification criteria appear to require high efficiency filters to be used (See 30 CFR 11.130 (a) and (c)). NIOSH certification for other than high efficiency filters is not valid for toxic substances with PEL values less than 0.050 mg/m^3 or 2 mppcf. When OSHA lowers the PEL, the certification of other than high efficiency filters for asbestos becomes questionable. Using the conversion factor provided by CHAP (Ex. 84–246, p. II–137), a TWA of 0.5 f/cc equates to 15 ug/m^3 or 0.015 mg/m^3, well below the cut off for other than high efficiency filters in 30 CFR Part 11 (a TWA of 0.2 f/cc equates to 0.006 mg/m^3). In addition, NIOSH certification of respirator filters for other than high efficiency types involve testing the filter medium using a large particulate aerosol. Filter efficiency for asbestos has not been thoroughly tested. Weeks and Burns reported the testing of several filter media with asbestos dust and found, with one exception, all filter madia had breakthrough below 1 percent (Ex. 84–352). The study, however, used very high asbestos concentrations to challenge the filters and insensitive gravimetric methods to measure filter breakthrough. OSHA does not believe that the results of this study represent actual filter performance in field conditions. In addition, OSHA is considering other modifications to the respirator provisions of the asbestos standard that would update it to current practice, such as more specific provisions for fit testing (see the EDB proposal, 48 FR 459995 and 45997 to 45999). OSHA invites the public to submit all relevant comment and information on all respirator issues.

OSHA solicits comment concerning the methods of compliance. The Agency is particularly interested in receiving comments, information, data and other evidence concerning the extend to which respirators may provide effective protection against asbestos exposure and may be relied upon as a substitute for engineering or work practice controls.

If the evidence in the record shows respirators are an effective means of controlling occupational exposures to asbestos in meeting the PEL, OSHA intends to include in the final rule a flexible compliance requirement.

As an alternative to proposing a flexible compliance requirement for all asbestos workplaces, OSHA is considering a limited exemption from an engineering control requirement for intermittent exposure situations. Asbestos exposures are intermittent for some workers, in the expósures are intermittent for some workers, in the exposures occur only for short periods and for a few times a month. These may occur, for instance, when periodic maintenance work is performed on a part of a plant's operation where asbestos is used as insulation on the equipment, but not as part of the process or product. OSHA encountered a similar situation for exposure to ethylene dibromide (EDB). For this substance OSHA proposed the use of engineering controls and work practices, but allowed the use of respirators in intermittent use situations. It stated "for the purpose of this proposal, intermittent operations are defined as those which result in exposures occurring for 1 or 2 days at any one time. A total of 30 days per year of workplace exposure is meant to describe days of operation involving the use of EDB in the workplace and not the number of days an employee is exposed (48 FR 53384)." OSHA requests comments regarding the application of an exemption from engineering controls for intermittent exposures to asbestos and how it can be applied to the types of exposures in the affected industries. In any case, OSHA intends to maintain the existing requirement for engineering and work practice controls to reduce exposures to 2 f/cc. OSHA also intends to revoke the requirement in the current standard that personnel rotation should be used to control exposures to asbestos. Personnel roation merely increases the population at risk from asbestos exposure and would not reduce the absolute number of excess deaths attributable to asbestos, according to mathematical models. See Ex. 84–405 for an example of how excess deaths are not reduced by personnel rotation or employee turnover.

OSHA may also promulgate a requirement that the employer establish and implement a written program to reduce employee exposures to asbestos to or below the permissible exposure limits. For example, see the arsenic standard 29 CFR 1910.1018 (8) (2). As ORC pointed out: "A written compliance program to reduce employee exposures to levels at or below both the PEL and the ceiling limit is an integral part of any overall asbestos control program". (1983, Ex. 86–004, p. 36).

OSHA is not proposing any changes to the present requirements for local exhaust ventilation and work practices to meet certain requirements when relied on to achieve the 2 f/cc PEL. (29 CFR 1910.1001 (c) (1) (ii), (c) (1) (iii), (c) (2) (i) and (c) (2) (ii)).

8. *Supplied air Respirators.* OSHA is also considering changing certain respirator requirements such as the kind of respirator required to protect employees engaged in spraying, demolition and removal operations. When the asbestos standard was adopted in 1972, exposures in these operations were almost always very high. OSHA believes that advances in work practices since 1972 have reduced exposure levels in these operations. OSHA is considering what types of respirators should be required for this type of work if it is decided to specify types. For example, powered air purifying respirators have become widely available since 1972 and may suffice under present conditions in the workplace. OSHA recognizes, also, that a reduction in the PEL may require more protective respirators such as supplied air respirators. OSHA requests

information and comments regarding this issue and, in particular, whether it is practical to require the use of supplied air respirators on renovation and demolition worksites.

9. *Protective Clothing.* OSHA is considering requiring the employer to provide at no cost to the employee, personal protective clothing, such as coveralls and similar clothing, when the employees are exposed to or above the new PEL. It may also require the employer to launder protective clothing under certain circumstances. the present standard now requires protective clothing if employees are exposed above the 10 f/cc cealing limit. OSHA believes a modification appropriate in light of the evidence developed since 1971 that asbestos is a potent human carcinogen.

10. *Housekeeping and Waste Disposal.* The current standard provides for housekeeping requirements and waste disposal, § 1910.1001(h). OSHA proposes to clarify that cleaning shall be done to maintain surfaces free of accumulations of asbestos fibers if their dispersion could result in concentrations in excess of the PEL.

11. *Medical Surveillance Program.* OSHA welcomes comments and evidence for updating the current medical surveillance requirements found at 29 CFR 1910.1001(i). By administrative interpretation and judicial decision, the medical surveillance provisions are now triggered at the 0.1 f/cc level. OSHA is strongly considering the following modifications in the current medical surveillance requirements:

(a) Triggering medical surveillance at 0.2 f/cc;

(b) Decreasing the frequency of chest-X-ray examinations for young employees or employees with short durations of exposure:

(c) A clarification of the time within which the employer must conduct preplacement examinations after hiring employees; for example, 6 months after hire dates may be a reasonable time period for conducting preplacement examinations;

(d) Additional tests or procedures for the purposes of early diagnosis of any disease, including the administration of a respiratory disease questionnaire; and

(e) Additional specifications concerning the performance of pulmonary function testing, including completion of a NIOSH-approved course in spirometry by non-physicians who administer the tests, calculation of the percentage difference from predicted values, and use of standard predicted values (see 29 CFR 1910.1043(h)).

Comments are also requested on the appropriateness of requiring screening for colo-rectal cancer, including tests for occult blood in the feces. In addition, futher specifications for the interpretation and reading of chest X-rays may be appropriate.

12. *Methods of Measurement.* OSHA is considering, as part of this 6(b) rulemaking, adding specific sampling and analytic protocols to the permanent standard, either as mandated provisions or as guidelines in an appendix.

OSHA's existing standard requires that all measurements of airborne concentrations of asbestos fibers be made by the membrane filter method at 400–500 x (magnification) (4 millimeter objective) with phase contrast illuniation (29 CFR 1910.1001(e)). After reviewing the relevant evidence concerning methods of measurement, OSHA believes that phase contrast microscopy is a feasible and effecitve method for measuring airborne asbestos fibers to determine compliance with the permissible exposure levels set by the ETS and it is being proposed as the method of measurement for the revised permanent standard.

One issue raised in the record to date is whether phase contrast microscopy analysis is capable of reliably measuring airborne concentrations less than 0.5 fibers/cc OSHA acknowledges that asbestos airborne measurement procedures using phase contrast microscopy, as with any industrial hygiene analytical procedure, inherently contain several error sources. It may be possible that phase contrast microscopy errors can be reduced if improved and standardized procedures are followed, perhaps by adding requirements to the standard. For example, mandatory training has been shown to improve reproducibility between fiber counters (microscopists). (Ex. 84–341.) Mandatory laboratory and counter certification is a possible method to achieve proper counter training. In addition, Jeremiah Lynch has recommended: "All mocroscopists who are doing the actual counting for compliance determination should be brought together for an 'asbestos counting workshop' at least quarterly" (Ex. 84–62, p. 21).

OSHA's experience with blood lead testing in the lead standard, 29 CFR 1910.1025, indicates that mandatory passing grades for laboratories in a quarterly proficiency test administered by CDC improves laboratory performance and decreases errors. In revisions to the permanent asbestos standard, OSHA is considering whether to mandate technical training, laboratory certification, and laboratory participation in a round robin testing program. OSHA is also considering whether to require that laboratories receive passing grades in the program. Finally, OSHA is considering adopting, verbatim or with modifications, the procedures recommended by the AIA (Ex. 86–002), or procedures of the kind described by Chatfield (Ex. 84–319) or the recent British government and NIOSH protocol (Ex. 84–446, 84–444).

Therefore OSHA anticipates the addition of these and other requirements to its standard to improve asbestos measurement reliability. Such improvements in analysis techniques may allow sufficiently accurate and precise measurement of asbestos concentrations below 0.5 fibers/cc, including the alternate proposed PEL of 0.2 f/cc. Comments on this issue and on regulatory language to be used in these provisions are requested. OSHA also requests technical comments on which analytical procedure provides the best results and whether OSHA should specify the procedure in the revised asbestos standard.

Phase contrast microscopy does not easily permit distinctions between asbestos types, nor distinction between an asbestos fiber and other fiber types. Thus, using phase contrast microscopy, any particle meeting the geometric definition of a fiber (a particle 5 micrometers or greater in length with an aspect ratio greater than 3 to 1) would often be counted as an asbestos fiber. For most situations and environments, such a method appears to be adequate. OSHA's experience, however, indicates that it is sometimes appropriate to make differential counts, and to attempt to eliminate the nonasbestos fibers from the measurement. Such circumstances include those in which asbestos and other fibers, e.g. fiber glass, are found together in a work environment. In such cases, OSHA has used polarized light microscopy techniques and the electron microscope to adjust counts for nonasbestos fibers. OSHA does not believe that it is necessary to propose differential analysis for the standard, but rather, use of phase contrast microscopy, which has proved adequate for most situations in the past, should be retained as the prescribed method.

OSHA also has considered whether other analytical methods, in particular electron microscope analysis, should replace phase contrast microscopy as the required method for measuring airborne concentrations of asbestos. At this time OSHA believes that it is not practical or necessary to modify its standard to require electron microscopy analysis instead of phase contrast light microscopy. Electron microscopy costs more per analysis than phase contrast microscopy because the electron microscope itself is more expensive than

the light microscope and counting fibers using the electron microscope is time consuming. Standard counting methods have only been recently developed for the electron microscope and it appears that improvements still need to be made (Ex. 84–238, Steel et al. p. 162 to 168). Further, causes of error exist with electron microscopy analysis that are similar to those encountered with phase contrast light microscopy methods (Ex. 84–238, Lee et al. p. 182).

OSHA recognizes that there appears to be a trend toward increased use of electron microscope analysis. The Environmental Protection Agency has developed provisional methods using electron microscopy analysis and has improved them (Ex. 84–230, Yamate and Beapel p. 183). Electron microscope analysis offers potential for minimizing some errors inherent in the phase contrast light microscope; for example, electron microscopy analysis is able to resolve very small particles, eliminating the potential error due to restrictions in optics in the phase contrast methods. Further, the electron microscope, because of its ability to count practically all fibers, is capable of counting all fibers of occupational health interest. Some of these fibers are smaller than those that can be seen using optical microscope, which cannot detect fibers less than approximately 0.3 micrometers in diameter. The counting which results from phase contrast microscopy is a measure of the larger fibers, and is only an index of the total asbestos fiber concentration.

However, phase contrast microscopy is an accepted and reliable indicator of asbestos concentrations that has been widely adopted and used internationally. At this time, there is only a limited amount of electron microscopy data available that describe workplace air concentrations; little is known about the relationship between measurements using electron microscopy and phase contrast microscopy or any other asbestos measurement method. In addition, OSHA's feasibility analysis for the permissible exposure limit includes dependence on the ability to measure air concentration levels. Since almost all workplace measurements are made with phase contrast microscopy, OSHA may have to modify its feasibility assessments if electron microscopy were the basis for asbestos measurements. Therefore, OSHA believes that phase contrast microscopy provides the best means for assessing worker exposure to asbestos in the working environment at this time. OSHA has retained its use for the ETS and proposes to retain the phase contrast microscopy method for the permanent standard. OSHA requests information relating to the relative merits of the electron microscopy and phase contrast microscope methods, and to the feasibility and appropriateness of other methods of measurement for airborne asbestos fibers. OSHA also requests data on the statistical limits of measurements at the 0.5 f/cc, 0.2 f/cc and 0.1 f/cc levels.

13. *Hygiene Facilities and Practices.* The current standard requires that the employer provide clean change room facilities, and two separate lockers for each employee for those employees exposed above the PEL (2 f/cc) or ceiling limit (10 f/cc) (29 CFR 1910.1001(d)(4)). OSHA is considering several modifications to these provisions. Rather than require only separate lockers, OSHA may require separate change room facilities, one for clean clothes, and one for dirty clothes. In addition, showering facilities may be added to allow the worker to remove all contamination from the body before changing into clean clothes. Such facilities could be required only in fixed places of employment, or could be required in all places of employment. These provisions would be required at the action level or at the new PELs.

Asbestos contaminated clothing taken out of the workplace has been shown to cause disease among household members, and probably increases the risk of disease to the asbestos worker. Comments are requested on these provisions.

14. *Signs and Labels.* Due to the evidence concerning the carcinogenicity of asbestos as discussed in the ETS, OSHA believes it appropriate to update the substantive requirements for signs and labels. For this reason, OSHA is considering adding a requirement for posting signs for regulated areas. The current standard requiring labels for products containing asbestos or their containers will continue to apply.

The signs to be posted at regulated areas inform employees of the carcinogenic hazards of asbestos and alert them to the fact that only persons authorized by the employer should enter the area. In addition, the language for signs and labels may be modified to include a hazard warning, such as "Cancer and Lung Disease Hazard" and the language for signs may restrict regulated areas to "Authorized Personnel Only":

DANGER
ASBESTOS HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS & PROTECTIVE CLOTHING
MAY BE REQUIRED TO BE WORN IN THIS AREA

15. *Recordkeeping.* The current standard requires the employer to maintain medical records, 29 CFR 1910.1001 (i)(6). OSHA is considering amending this provision to require that medical records be preserved and maintained for at least the duration of employment plus thirty years. This modification is necessary to account for the long latency period for asbestos-related diseases and makes the asbestos standard consistent with the access to medical records standard, 29 CFR 1910.20. Similarly, OSHA may modify 29 CFR 1910.1001 (i) to require that employers preserve and maintain monitoring data for 30 years (rather than 20 years).

B. Issues Concerning the Construction Industry

The present standard (29 CFR 1910.1001) is applicable to all occupational exposures to asbestos in every workplace and every industry covered by the Act. OSHA has received comments stating that the present standard for asbestos was designed more for fixed-site manufacturing operations than for nonfixed workplaces with a highly transient work force and therefore that the present standard is not entirely suited to construction worksites. This position has also been supported by the Building and Construction Trades Department of the AFL–CIO (Ex. 87–2). Moreover, the 1975 proposal itself excluded the construction industry on the basis that the apparent "* * * uniqueness of the construction industry itself (viz., the multiplicity of nonfixed workplaces, and the utilization of highly transient work forces) strongly suggests separate treatment" (40 FR 47657, Oct. 9, 1975).

OSHA's Construction Advisory Committee for Occupational Safety and Health (CACOSH) has cautioned that the usual approach followed in OSHA's health standards for general industry might not be the most effective way to regulate occupational exposures in the construction industry. Although these deliberations concerned all health standards, not just asbestos, OSHA believes they are pertinent to protecting construction workers against the hazards of asbestos exposure. Specifically, on May 16–17, 1979, CACOSH recommended that a separate set of health standards be developed to meet the special conditions of the construction industry. A report of a

CACOSH subgroup on health standards was issued on May 16, 1980 (Ex. 84–233). It included discussion of the major problem areas that construction employers and employees have encountered in attempting to comply with OSHA health standards. The report also contained recommendations aimed at facilitating compliance for employers while improving protection of workers. The recommendations are summarized in the discussion which follows.

OSHA has provided CACOSH with a copy of a draft (Ex. 84–423, of this proposal and supporting documentation pursuant to the requirement of OSHA's regulations (29 CFR 1911.10) and section 10 of the Contract Work Hours and Safety Standards Act.

The regulatory text of the draft proposal submitted to CACOSH is identical to the text in this notice except that the proposed PEL in the submitted text was 0.5 f/cc. The preamble in the draft document concerning health effects and revisions under consideration is virtually identical to the discussion in this notice except that the draft did not indicate OSHA's intention to revise the designation of tremolite to "asbestiform tremolite".

On January 11, 1984, OSHA officials met with CACOSH to consult with and receive recommendations concerning this proposal. The committee expressed its overall concern about providing adequate protection for construction employees exposed to asbestos. Accordingly, the CACOSH's major recommendation is that OSHA promulgate a separate and different standard regulating asbestos exposure in the construction industry which would address the special needs of that industry. Other major recommendations of the committee include the following: that OSHA set a permissible exposure limit at the lowest feasible level and require that feasible engineering and work practice controls be implemented to meet the PEL; that OSHA adopt the definition of asbestos recommended by the 1980 NIOSH–OSHA Task Force; that specific monitoring protocols be set out in an appendix; that it is feasible to reliably measure asbestos exposure down to the .1 f/cc level; that two types of regulated areas should be established; that a ceiling level be established and that its choice should depend on the TWA PEL; that current medical surveillance provisions should be modified; and that specific work practices be required whenever asbestos exposure may occur. OSHA has placed the transcript of this meeting in the record (Ex. 84–424) and invites public cement on all the recommendations made by the committee. The Agency has and will continue to consider CACOSH's advice in formulating revisions to the asbestos standard which apply to the construction industry.

Based upon the evidence available, OSHA believes that there are differences between the construction industry and other industries covered by the Act. In particular, the transient nature of most construction employment, the changing conditions of exposure due in large part to outdoor exposures and the short tenure for employment in some cases combine to pose special difficulties in designing worker protection programs.

Within the construction industry, the nature of worker exposure varies. For example, dry wall removal, major building renovation and demolition where asbestos installation is present exposes a large number of workers to high asbestos levels. Another type of exposure results from installation of new materials containing asbestos, such as asbestos-cement pipe. Other asbestos exposures involve a relatively large number of workers who perform maintenance in buildings, chemical plants, factories, power-generating plants and other locations where asbestos is used for insulation materials. Finally, a large number of construction workers not handling asbestos are exposed to asbestos on their job sites because of asbestos handling by other employees. OSHA believes the differing nature of these exposures should be assessed when developing a standard. OSHA requests additional information regarding the variety of exposures to construction employees, resulting from such factors as the frequency of exposure, the exposure levels, and the type of work performed.

OSHA is considering three different approaches to the format of regulations governing asbestos exposures in the construction industry. They are: (1) To continue to apply the same standards as amended, to all industries, perhaps adjusting certain requirements for the construction industry; (2) to limit the scope of an asbestos standard for the construction industry to setting permissible exposure limits, with additional protection provided by recourse to relevant OSHA standards of general applicability such as 29 CFR 1910.134 or 1926.103, governing respiratory protection; 29 CFR 1910.132, 133, 135 and 136, 29 CFR 1926.55, 100, and 102 relating to protective clothing and equipment; 29 CFR 1926.21 relating to employee training; 29 CFR 1910.141 (g)(2) relating to restricting eating and drinking; and 29 CFR 1926.51 (f) relating to washing facilities; and (3) to develop a separate standard for asbestos exposure in the construction industry. The discussion which follows concerns specific issues relating to the protection of construction employees. OSHA will discuss, where relevant, how applying these varying approaches may affect the protection offered employees.

1. *Permissible Exposure Limits.* OSHA believes that the PEL should be the same for construction as for other segments of industry. The PEL represents a given level of risk reduction, and, as such, OSHA believes that the goal for reduction of the risk of asbestos-related disease should be the same for construction as for other industries. In that regard, on May 24, 1983, CACOSH endorsed OSHA's position that changes in the PEL for asbestos made for general industry should also apply to the construction industry. Also, more generally CACOSH's Report of May 16, 1980 stated in pertinent part:

> In reviewing permissible exposure limits, it was agreed that the concept of limiting the exposure of employees to toxic materials is the appropriate means for controlling both acute and chronic health effects. Because all employees deserve equal protection against the effects of a given toxic material, the same exposure limits should be applied to all industries, including construction. (Ex. 84–233, p. 5).

OSHA requests comments concerning whether the TWA permissible exposure limit adopted for general industry should apply to the construction industry. OSHA solicits comments on whether a ceiling level should be adopted in the construction industry independent of the decision made concerning a ceiling level for other industries.

2. *Exposure Monitoring and Measurement.* Monitoring has always been one of the touchstones of OSHA health standards. Without some form of monitoring for asbestos, neither OSHA nor employers would know the extent to which controls were needed. Moreover, section 6(b)(7) of the Act mandates that any standard promulgated under this Act shall, where appropriate, "provide for monitoring or measuring employee exposures at such locations and intervals, and in such manner as may be necessary for the protection of employees."

In its 1980 recommendations covering all health standards, CACOSH endorsed the importance of monitoring; "as a general rule, monitoring was considered necessary to a comprehensive worker protection program." CACOSH,

however, enumerated several problem areas concerning monitoring on construction sites.

The Committee pointed out that because of the transient nature of most construction work sites, sampling and analysis of employee exposures may not be completed until well into the project or even after it has been completed. Further, because much construction work is outside and in highly variable conditions, one shift's sampling may not represent future exposures. Finally, employees may be exposed to asbestos concentrations where the sources of asbestos are under the control of the building owner.

OSHA agrees with CACOSH that monitoring as traditionally mandated by OSHA health standards for fixed workplaces may be less useful in nonfixed workplaces where conditions of employment change more rapidly (See the submission of AIA in this regard (Ex. 84–307)). OSHA also agrees that in many instances effective protection of construction employees may depend on information provided by the buildling owner regarding the presence of asbestos in the owner's building.

Recommendations concerning these problems have been made to OSHA. To meet the first problem, CACOSH has recommeded that safe work practices should be developed and accepted by OSHA in lieu of air testing. To meet the second problem CACOSH recommended that OSHA require building owners to provide historical and current monitoring results to the contractor before the initiation of work, and require building owners to conduct all periodic monitoring for on-site contractors where the source of asbestos is under the control of the building owner (Ex. 84–233, pp. 36–37).

Both industry and labor groups have suggested alternatives to monitoring under specified circumstances. AIA has suggested a detailed certification system for products and work practices. Thereafter employers would be exempt from monitoring when employees are working with products and/or employing work practices classified as incapable of generating asbestos air concentrations above the PEL (Ex. 84–307). The Building and Construction Trades Department of the AFL–CIO (BCTD) similarly would exempt employers from monitoring when employees were handling products and using work practices certified as unable to produce greater than an "ambient" level of airborne asbestos fibers (Ex. 87–2). However, because the standard recommended by the BCTD would permit a monitoring exemption only at very low concentrations, it would apply to far fewer work situations than the exemption suggested by AIA.

OSHA believes that alternatives to the present requirements for initial and periodic monitoring of employee exposures to asbestos in construction worksites must provide an adequate level of assurance that the methods used to control worker exposure do, in fact, reduce exposure to the permissible exposure limit. OSHA will consider evidence showing under what conditions prior evaluation of asbestos exposures provide an adequate basis for determining employee exposures in the future. This evidence may permit OSHA to adopt alternatives to traditional monitoring. Alternative approaches may include certification of work practices, with appropriate safeguards such as a certified competent person in charge of asbestos handling operations. OSHA encourages and directs public comment to this and the following issues regarding exposure monitoring and measurement:

1. Whether the present requirements for initial determinations for each place of employment are feasible for nonfixed workplaces that may exist for short periods of time;

2. Whether and under what conditions can a prior evaluation of asbestos exposures from specific work practices and materials provide an adequate basis for determining employee exposure in the future for employees engaged in the same type of operation e.g., installations of asbestos cement pipe;

3. Whether any change from the present standard should be permitted concerning sampling frequency and patterns;

4. Whether the nature of the exposure patterns in demolition (high exposures) necessitates special provisions; and

5. Whether the time required to receive the results of the asbestos air sample from the laboratory affects the usefulness of the monitoring; if so how, and how long does it take to receive results from the laboratory.

3. *Methods of Compliance.* As stated above in this notice, OSHA has recently undertaken a review of its general policy relating to the use of engineering controls and respirators for controlling employee exposure to airborne contaminants. Two advance notices of proposed rulemakings have been published on May 14, 1982 (47 FR 20803) and February 22, 1983 (48 FR 7473) concerning the possible revision of two general standards, namely 29 CFR 1910.1000(e) (Air Contaminants) and 29 CFR 1910.134(a)(1) (Respiratory Protection).

For this revised asbestos standard, OSHA is proposing to allow employers to choose among engineering controls, work practices and personal protective equipment to reduce asbestos exposure from 2.0 f/cc to the new PEL. This proposed provision marks a departure from OSHA's usual "methods of compliance" requirement in previous health standards, including the permanent asbestos standard which requires employers to first implement feasible engineering and work practice controls before relying on respirators to meet the PEL.

The 1980 CACOSH report endorsed this policy of preferring engineering and work practice controls whenever feasible. However, the committee pointed out that research and development of engineering controls suitable for the construction industry has lagged behind general industry (Ex. 84–233, pp. 49–52).

Since the 1980 CACOSH report, OSHA has received submissions relating to improved engineering and work practices for the construction industry. In particular, AIA has developed and tested devices and procedures aimed at reducing asbestos concentrations at construction work sites mostly applicable to the installation of new asbestos containing materials (Ex. 84–307). OSHA believes therefore, that for construction operations pertaining to handling and installation of new products, feasible engineering solutions to the containment of asbestos dust to relatively low levels may now exist. Comments are solicited on this issue.

OSHA's estimates of employee population and exposures set out in the ETS, indicate that by far, the construction segment with the highest exposure potential is drywall removal, renovation and demolition operations involving previously-installed asbestos products (see 48 Fr 51094). For some operations, feasible engineering solutions do not appear capable of reducing airborne levels to even the current PEL of 2 f/cc on a reliable basis. Work practices, however, such as wetting down the areas to be disturbed, are of proven value in reducing exposures. In this regard EPA has published procedures as guidelines for certain renovation and "ripout" operations, which rely primarily on carefully administered work practices, supplemented by respirator use to reduce exposures.

OSHA believes, therefore, that feasible engineering controls and practices exist which are capable of effecting significant exposure reductions

in many construction operations. Comments are solicited on actual field experience concerning the effectiveness of such controls.

OSHA is considering whether using the flexible compliance strategy proposed for general industry to reduce exposures from 2.0 f/cc to the new PEL should be adopted for the construction industry. Under this approach, employers would choose among engineering controls, work practices and respirators.

In addition, the agency will evaluate whether the choice of a more protective respirator would exempt employers from introducing otherwise required engineering and work practices e.g. using a supplied air respirator in situations where ambient levels are less than 100 times the new PEL.

OSHA has received suggestions concerning alternative new compliance approaches. For example, the AFL–CIO has suggested extensive work practice prohibitions and requirements (Ex. 87–2). AIA has suggested primarily reliance on certified work practices and engineering control (Ex. 84–307). OSHA believes these approaches deserve careful attention and invites public comment on their feasibility and appropriateness for various segments of the construction industry.

OSHA requests comments on all aspects of the compliance approach in the asbestos standard as it impacts on the construction industry. In particular, OSHA intends to examine carefully alternative methods of compliance for use in the construction arena which may provide reliable, cost-effective means of worker protection in activities involving asbestos. As pointed out above, OSHA is presently reviewing methods of compliance, including their impact on the construction industry. The Agency will assess alternative strategies such as licensing of construction firms and employees exposed to asbestos. The Building and Construction Trades Department, AFL–CIO, has made a recommendation that requires employer proficiency requirements and the use of qualified and competent persons to help ensure that the work practices are performed properly (Ex. 87–2). (Note: The definition of competent person is an employee who has been specifically trained and certified in the safe handling of asbestos.) The AIA has suggested reliance on certified work practice and engineering controls (Ex. 84–307). A more detailed discussion of alternative compliance approaches follows this section. OSHA solicits comments on these approaches.

4. *Respiratory Protection.* The present standard requires that whenever respirators are necessary to reduce exposure to or below the PEL, the employer must provide the respirators at no cost to the employee and assure their use. OSHA believes that as a result of this rulemaking, there will be increased reliance on respiratory protection in the construction industry. OSHA proposes to allow employers to choose among respirators, engineering controls and work practices to reduce exposures from 2 f/cc to the new PEL. Also historically, because of the variable conditions on most construction sites, employers frequently supplement engineering and work practice controls with respiratory protection. Therefore, for these operations, respiratory protection likely will be necessary regardless of the hierarchy of compliance methods adopted by OSHA.

In those operations where feasible engineering controls and work practices would be capable of reducing exposures to the new PEL, respiratory protection would still be necessary while such controls are being implemented and during emergency situations.

Because of the reliance on respiratory protection on many construction sites in meeting reduced PELs, OSHA is concerned about improving the reliability and effectiveness of respiratory protection. Proper selection of respirators is critical to this goal.

The respirator selection table proposed in this document ties respirator selection to the proposed PEL. Accordingly, reusable or single use air purifying respirators may be used where airborne asbestos concentrations do not exceed 10 times the PEL, and full facepiece air purfying respirators may be used where concentrations do not exceed 100 times the proposed PEL. In atmospheres where asbestos concentrations exceed 100 times the PEL, supplied air respirators must be used. In the ETS, OSHA stated that "It is likely that the main impact of the reduced PEL on respirator choice will be in operations and industries where exposure levels are between 5 f/cc and 20 f/cc." Under the current Standard of 2 f/cc, employees exposed in this range could use half-mask air purifying respirators; the proposal provides for protection by a powered air purifying respirator or a full facepiece respirator, or a supplied air respirator may be used.

OSHA has estimated that average exposures in the dry wall removal, renovation and demolition industry segment employee exposures are 20 f/cc where employees are not wearing respirators. Therefore many exposures fall within the 5 f/cc to 20 f/cc range. The revised respirator provision would allow such employees to use, in addition to supplied air respirators, powered air purifying respirators (PAPRs), or full facepiece respirators. OSHA invites comments concerning selection of appropriate respiratory protection for workers engaged in these segments.

Because of the heavy reliance on respirators in many construction operations, OSHA is also concerned with the adequacy of the current standards covering respirator programs and selection, sections 1910.134 and 1001. In particular OSHA is interested in whether more explicit fit testing requirements should be mandated for construction employment and the content of such programs.

5. *Personal Protective Equipment.* The standard now requires that the employer provide and assure that employees who are subject to asbestos exposure in excess of the ceiling limit use appropriate protective clothing (paragraph 1910.1001(d)(3)). The standard is sufficiently performance-oriented to allow the employer flexibility to provide only the protective clothing necessary to protect employees in each particular work operation from asbestos. The CACOSH report stated regarding this issue:

> *Protective Workclothing*—All of the health standards except cotton dust include requirements for protective garments, faceshields, goggles, footwear and other items of equipment to be worn by the worker for skin or eye protection. These requirements follow a common pattern in that they assign the responsibility for purchase, cleaning, maintenance, storage, and use to the employer.
>
> * * * * *
>
> * * * OSHA should consider past practices of industry with regard to types of protective clothing that are practicable, and also recognize that the cost of protective clothing goes far beyond the purchase of the clothing itself and includes the costs of storage lockers, change rooms, and laundering.
>
> In summary, OSHA standards should be more precise about the need for protective clothing. Such standards should require solutions to the problems of heat stress, clothing flammability and clothing quality that are created by certain jobs. (Ex. 84–233)

In light of CACOSH's comments, OSHA invites comments concerning the applicability of the present requirements for personal protective equipment to the construction industry. The public is requested to comment on whether the provisions of the present standard are adequate to protect asbestos workers in the construction industry.

6. *Hygiene Facilities and Practices.* The current asbestos standard requires that change rooms and clothes lockers be provided at "fixed" places of

employment essentially excluding construction sites (section 1910.1001 (d)(4)). OSHA is considering in this rulemaking requiring additional hygiene facilities such as showers and lunch rooms for general industry. The feasibility of providing such facilities at construction sites was discussed by CACOSH as follows:

Hygiene Facilities

* * * * *

Industrial construction, where most of the toxic exposures are found, are in remote areas. Water in large amounts is not always available. The disposition of large volumes of waste water containing toxic residues would be most difficult.

During the winter months in northern parts of the country, employees work both outside and inside and must dress accordingly. The requirement of employee showers is questionable as to feasibility in such an environment.

* * * * *

The Committee agreed that lunchroom facilities appropriate to the work place should be provided. If there are not clean eating areas available, then the employer should provide such a facility.

It was also agreed that a suitable space to change from contaminated work clothes should be provided. The employer shall insure that such clothing is decontaminated, clean and dry before reuse. (Ex. 84–233, pp. 53–54).

OSHA solicits the views of the impacted parties as to the concerns expressed by CACOSH. Specific issues that should be addressed in this rulemaking are:

1. What facilities and hygiene practices are appropriate to protect construction industry employees exposed to asbestos; and

2. What changes, if any, should be made to the present standard to assure that the provisions for hygiene facilities may be effectively implemented in light of varying weather, a transient work force and nonfixed workplaces.

OSHA agrees with CACOSH that the transient work conditions in nonfixed workplaces may make the traditional hygiene facilities and practices sometimes difficult to apply. Comments are encouraged to address the two specific issues raised above.

7. *Medical Surveillance.* Medical surveillance programs are mandated by the statute where appropriate and are required by the present asbestos standard (Section 6(b)(7) of the Act and paragraph 1910.1001 (i)). Where medical examinations are required, they must be provided without cost to the employee. Preplacement, periodic and termination examinations are now required, except that no examination is required if records show that an employee has had an examination within the last one year period. CACOSH has raised some concerns regarding the applicability of medical surveillance standards for the construction industry:

For the construction industry, medical examinations are considered a major economic and logistical problem. The primary reason is that employee turnover in the construction industry is high as compared to the manufacturing industry. In construction, employees may be hired for anywhere from one day to many years. One employee may work for three to ten employers throughout the country in the course of a year. The attempt to superimpose initial and periodic physical examinations on such a pattern on employment presents severe problems for both employees and employers.

* * * * *

There appears to be no mechanism in the OSHA standards which will prevent an employer from utilizing these medical examinations to exclude all but the most hardy human specimens. OSHA standards that require medical examinations should specify that physicians only give the employer an opinion regarding the employee's ability to perform or not perform the job from a medical standpoint. The specific values of medical testing and evaluation are confidential matters between physician and patient.

Good preventive medicine requires knowledge of environmental conditions on the job by the physician and the ability of the physician to follow the employee over time and to initiate treatment or change the employee's working conditions for the good of the employee. Achieving these objectives is difficult in construction. Employees who work for short periods are sometimes terminated before the complete results of the examination reach the employer. The multiple employer and multiple physician situation. Destroys the value of continuity of medical records. Neither the physicians involved nor the employers involved have the opportunity to provide the employee with the benefits of a useful medical record system because records are ofter scattered over a wide geographical area with no provisions for communication between physicians and/or employers.

* * * * *

While it was agreed that OSHA had the best interests of employees in mind when mandating initial and periodic examinations, there was disagreement in the subgroup and among the experts who testified before the subgroup that these best interests could be achieved in the construction industry. From the preventive point of view, an overdependence on medical control systems in lieu of environmental control systems may harm employees more than help them.

* * * * *

New standards for the construction industry should recognize the impracticability of attempting to include a requirement for medical surveillance in every health standard. Instead, attention within NIOSH and OSHA should be directed toward developing a generic standard for physical examinations and the identification and documentation of hazardous materials, processes, and work practices in the industry. Additionally, these agencies should mount a major effort to develop and publish economical and practical methods of controlling these hazards so that the work environment can be made inherently safe. New standards should emphasize environmental controls and deemphasize dependence on medical controls unless they are necessary. (Ex. 84–233)

Changes to the current standard have been suggested to meet some of these concerns. For example the BCTD's recommended standard explicitly provides that with the exception of examinations to determine an employee's fitness to wear a respirator, employees shall not be required to submit to medical examinations. (Ex. 87–2, p. 24). Further, the BCTD standard contains an explicit prohibition against conditioning hiring or otherwise discriminating on the basis of whether an employee is entitled to a medical examination (Id. p. 26).

AIA's recommended standard would exempt employees from medical examination who handle products classified in 2 of the 3 categories. Only employees exposed to products classified as "category C," the most hazardous, would be covered by the current medical surveillance provisions. Although AIA asserts that these provisions are generally inappropriate for construction workplaces, they "should nevertheless be enforced . . . to provide a strong incentive for developing safer products and work practices" (Ex. 84–304, p. 34). AIA'a recommended standard, however, does not address situations where employees are exposed to previously installed asbestos, primarily in renovation, "rip-out" demolition operations.

The content of medical examinations is also an issue under consideration by OSHA. As stated above in the discussion applying to general industry, OSHA is considering reducing the frequency of X-rays by limiting the X-ray requirement to higher-risk workers. The AFL–CIO suggests a similar approach, X-rays every 3 years, although yearly examinations are required to be offered employees over 40 years old.

The frequency of examinations, now required to be offered yearly, are also under reevaluation by OSHA. The BCTD suggested standard uses both age and duration of employment in the building and construction industry as criteria for frequency of required examinations (Ex. 87–2 p. 27).

Comments on issues pertaining to medical examinations in the

construction industry including those listed in the general industry discussion are solicited.

8. *Recordkeeping.* The present standard requires that records of personnel regarding environmental monitoring results shall be maintained for at least 20 years and that medical records be maintained at least for that same period of time. OSHA is considering extending this time period to 30 years. Regarding recordkeeping CACOSH stated:

> To assess the protection provided by an environmental standard, health effects must be correlated with levels of exposure and occupational history. This may not often be possible in construction work where employment is temporary, the work location is continually changing, and environmental exposures are subject to the variability of wind and weather. Workers may use or be exposed to a given material for short periods of time, in some cases only a few days. These combined variables make it extremely difficult to accurately characterize any particular worker's exposure.
>
> Some construction firms are created to carry out a project and then are dissolved. For this reason, a great many of the medical records will be lost. There is also no provision for making use of these records in the future, except that they be sent to NIOSH. Most likely, these records will simply fill up government warehouses at significant cost to the taxpayers and to the employers who originally collected them.
>
> Because construction workers change employers regularly as described above, the records that are not lost through closure of the construction firm will be scattered among surviving construction firms located throughout a geographical region or sometimes throughout the country. These records also will have little value for epidemiological purposes or other long-term studies.
>
> The construction industry requireds a different approach to reaching the goals of recordkeeping. (Ex 84–233, pp 32–33).

In considering what, if any, recordkeeping requirements should be mandated for the construction industry, OSHA shares the same concerns as those expressed by CACOSH. Because of the complexities inherent in this area, OSHA solicits public comment.

9. *New Suggested Regulatory Provisions for Construction. A. Product Certification System.* AIA has submitted a recommended standard which relies on a classification and certification system for new products used in construction (Ex. 84–307). Depending on the classification given to a product, employers may be exempt from most duties imposed by the asbestos standard, such as monitoring and hygiene facilities. Classification for the most part depends on manufacturer certification, and is based on the potential for releasing airborne concentrations of asbestos. The highest classification is reserved for products which will not result in concentrations above the PEL using any foreseeable process or use; the next highest rank is given to products which will not release concentrations over the PEL when work practices "validated" by the manufacturer are used. For both product categories, a specially trained "compliance coordinator" must be designated to supervise work activities. As stated above, AIA's product certification system does not include demolition, renovation and "rip-out" operations, since they do not involve the installation of new products.

The BCTD's suggested standard (87–02) also contains a product categorization system. However, only categorization in the safest category would result in significant exemptions from most protective provisions. Further concentration cut-off which would qualify a product for such classification is essentially an ambient air level. For these reasons, the BCTD's product categorization system does not appear to eliminate many of the standard's requirements, as would the AIA system.

B. *Employer Reporting and Employee and Employer Certification System.* The BCTD's suggested standard would require employers to report to OSHA prior to doing a job where asbestos exposure occurs. Among other things, emloyers would have to report their asbestos-related job history, asbestos products to be used, all protective programs, identification of monitoring personnel, and identification of "competent" people on the job. Competency requirements for employees would be established. Only employees certified by their employer would be able to perform most asbestos work. Competency would be established in large part by the results of an examination. Specified supervisory and administrative duties could be performed only by specially trained "qualified" and "competent" persons. OSHA believes these approaches deserve serious consideration.

OSHA points out that a different type of work practice certification is found in OSHA's safety standard concerning ground-fault electrical protection for employees in the construction industry (29 CFR 1926.400(h)). These requirements permit the use of an assured equipment grounding program which includes a designation of one or more competent persons to be in charge, a written program, a testing program, and a record retention program tailored to meet the specific needs of occupational safety for employees dealing with electricity in the construction industry.

Employer certification may be new to OSHA standard setting, but it is not unique to governmental regulation of high hazard industries or operations. It involves the premise that only employers or employees exhibiting a unique skill and a specialized training—and so certified as such by OSHA or by the employer—should be permitted to engage in certain or all hazardous activities. The alternative would be that the noncertified construction industry employer or employers using noncertified employees would be bound by the requirements of 1910.1001. Moreover, this concept is one that could be used in conjunction with equipment and/or work practice certification, namely that such work practices could be used by an employer certified by OSHA or by workers certified as "competent".

An example of employer certification is that of the United States Nuclear Regulatory Commission. Except for persons who have exposure to minute amounts of radioactive material that the NRC has specifically exempted, all persons who posses, acquire, transport, etc. radioactive materials must be licensed by the NRC or by some other government agency such as the DOT. See 10 CFR Parts 1–150. There is a high premium on training and safety programs before certification is given. Further, employees named as performing work must be shown to have specific experience or training. In addition, Great Britain has established employer licensing requirements that become effective on August 1, 1984. (Ex. 84–406)

OSHA invites comments concerning additional options which would both provide full protection to affected construction employees and at the same time would minimize the administrative and economic burden on affected construction employers—especially those with small numbers of employees, nonfixed workplaces, or highly transient work forces. As the result of this rulemaking, OSHA will consider whether changes in the present standard for the construction industry are warranted, and if so, what those change should be and how they should be made. OSHA may, on the basis of information submitted as part of this rulemaking adopt specific changes in the current standard for the purpose of addressing the unique construction industry concerns. OSHA may also promulgate a separate standard, in whole or in part, dealing with occupational exposures to asbestos in the construction industry. In any case,

OSHA presently intends to codify the asbestos construction standard at the place designated for construction standards, namely 29 CFR Part 1926.

VII. Regulatory Impact Analysis and Regulatory Flexibility Analysis

Introduction

The Occupational Safety and Health Administration (OSHA) is required to assess the feasibility of the proposed standard and is required by Executive Order 12291 and the Regulatory Flexibility Act to assess the economic impact of the proposed standard. The following summary presents OSHA's analysis of the industries which would be covered, the technical feasibility, the benefits, costs, and overall economic impact of the proposed standards.

A. Industries Affected

The industries affected by the proposed standard include primary manufacturing, secondary manufacturing, automotive aftermarket, shipbuilding and ship repair, and construction.

The affected industries in primary manufacturing by Standard Industrial Classification (SIC) Code include: SIC 3292, Asbestos Products; SIC 2661, Building Paper and Building Board Mills; SIC 3292, Gaskets, Packings, and Sealing Devices; SIC 3996, Linoleum, Asphalted-Felt Base and Other Hard Surface Floor Coverings; and SIC 2952, Asphalt Felts and Coverings. Most of the establishments that produce asbestos products are classified in SIC 3292. The major product lines that are affected include cement pipe, cement sheet, friction materials, floor tile, paper, coatings, sealants, textiles, gaskets, and packings. The number of plants in this grouping and the numer of potentially exposed workers are presented in Table 1.

Secondary manufacturers alter an asbestos product to yield a final product or another intermediate product. The RTI report (Ex. 84–9) identifies the following SICs as being affected in the secondary manufacturing group: SIC 2451, Mobile Homes; SIC 3357, Drawing and Insulating of Nonferrous Wire; SIC 3523, Farm Machinery and Equipment; SIC 3531, Construction Machinery and Equipment; and SIC 3842, Dental Equipment and Supplies. Secondary fabrication of asbestos products in these groups, however, is limited. The Selikoff study (Ex. 84–90) identifies heating equipment manufacturers, boiler shops, manufacturers of industrial furnaces and ovens and manufacturers of electric housewares and fans as being secondary manufacturers using asbestos products. Secondary processing involves sawing, pressing, slitting or drilling of asbestos-containing materials and, hence, produces some relatively high exposure levels. OSHA does not have more recent survey data on which to base an estimate of numbers of plants using asbestos materials or the number of workers exposed. For analytical purposes, OSHA uses the SIC categories and exposure level provided by RTI. The number of plants and workers are presented in Table 1.

Three groups in the automotive aftermarket may be affected: (1) refacing or rebuilding of friction materials, (2) repackaging of friction materials, and (3) general brake repair and maintenance. The exposures during repacking of friction materials are assumed to be minimal. The major source of exposure to asbestos in this industry occurs during brake repair and maintenance. The number of plants and the number of potentially exposed workers are shown in Table 1.

The shipbuilding and ship repair industry which would be affected is classified as SIC 3731. The shipbuilding industry has increasingly phased out use of asbestos for new building, and, therefore, the primary source of asbestos exposure is during the removal of old asbestos insulation and during repair and maintenance of bulkheads. OSHA estimates that 30 commercial shipyards and 8 naval shipyards would be affected by the revised standard. The number of employees exposed is presented in Table 1.

TABLE 1.—OSHA ESTIMATE OF EMPLOYEE EXPOSURE TO ASBESTOS

Industry segment	Number of exposed workers[1]	Number of plants[1]	Current exposure level f/cc
Primary manufacturing:			
Asbestos-cement pipe	675	9	1.00
Asbestos-cement sheet	225	5	1.00
Friction materials	3,677	31	1.50
Floor tile	4,746	14	
Receiving, introductions mixing	1,187		0.50
Rest of plant	3,559		0.20
Asbestos paper	1,897	22	
Receiving, introduction mixing and preparation	474		0.75
Rest of plant	1,423		0.20
Gaskets, seals and packings	876	26	
Sheet formation, cutting and packaging	219		0.20
Rest of plant	657		0.75
Paintings, Coatings and Sealants	135	5	
Mixing, compounding and packaging	34		0.75
Rest of plant	101		0.00
Textiles	1,125	5	
Wet Process	375	2	0.75
Dry Process	750	3	1.50
Secondary fabricators: [2]			
Cement sheets	4,301	1,076	2.00
Paper products	4,301	1,076	2.00

TABLE 1.—OSHA ESTIMATE OF EMPLOYEE EXPOSURE TO ASBESTOS—Continued

Industry segment	Number of exposed workers[1]	Number of plants[1]	Current exposure level f/cc
Packings and gaskets	4,301	1,076	2.00
Textiles	4,301	1,076	1.00
Automotive aftermarket:			
Rebuilding and refacing	4,091	140	2.00
Brake repair:			
Garages and brake shops	176,356	68,089	0.15
Gasoline stations	84,961	77,896	<0.10
Shipbuilding and repair [3]	3,044	38	
Shipbuilding	1,522		0.50
Ship repair	304		5.00
	1,218		0.50
Construction: [4]			
Installation of new materials:			
Asbestos-cement pipe	5,458	546	0.75
Asbestos-cement sheet	1,765	177	2.00
Roofing felts	2,499	250	0.15
Repair and maintenance involving drywall removal, renovation and demolition [5]	12,955	1,296	20.00
	38,866	3,887	0.20
Repair and maintenance involving asbestos removal	14,845	1,485	0.15
Maintenance workers in schools, chemical plants electrical generating plants and foundries	NA	NA	0.15
Total workers exposed above 0.5 f/cc [6]			48,644
Total workers exposed above 0.2 f/cc [7]			52,571
Total exposed workers			375,399

[1] Population and facility estimates were based on the RTI report (Ex. 84–009) and updated to 1983 employment levels by JRB Associates.

[2] The number of plants in the SIC codes making up Secondary Fabricators (2451, 3357, 3523, 3531, and 3842) was derived by JRB Associates by taking the number of establishments with 20 or more employees, as listed in the Economic Information Systems data base for 1983, and expanding that number by the percent of establishments with fewer than 20 employees, as listed in *County Business Patterns*, 1980. Not knowing exactly how the 17,204 Secondary Fabrication (SF) workers and 4,304 SF plants were distributed among the 4 types of SF facilities, OSHA assumed that the workers and plants were distributed equally among the 4 types of SF facilities.

[3] Assumed that 20% of 1522 ship repair workers are not in compliance with current respirator requirements. Hence, the number of workers was adjusted to reflect the 20% of exposed workers.

[4] Assumed average firm employs 9–10 workers as is true of SIC 17 (construction, special trade contractors).

[5] Assumed that 25% of 51820 drywall removal, renovation, and demolition workers are not in compliance with current respirator requirements. Hence, the number of workers was adjusted to reflect the 25% of exposed workers.

[6] This figure excludes segments that are in compliance with a 0.5 f/cc PEL such as floor tile manufacturing and those in compliance with a 0.2 f/cc PEL.

[7] This figure excludes segments that are in compliance with a 0.2 PEL such as tile, brake repair, roofing felts, and repair and maintenance.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory analysis, September 1983.

Asbestos exposures in construction are expected to occur when installing asbestos-cement pipe and sheet, sanding vinyl-asbestos floor tiles, installing built-up roofing, removing old insulation, removing or repairing drywall, demolishing buildings containing asbestos products, and removing old build-up roofing. Workers involved in maintenance and repair of pipes, boilers or furnaces in a wide variety of industries and buildings may also be exposed to some degree to asbestos.

Due to lack of information on these workers, OSHA has not included them in the economic analysis. Preliminary information for this group of maintenance workers is available in the JRB study (Ex. 84–393). The affected SICs in construction would include: SIC 1521, General Building Contractors, Single Family Houses; SIC 1522, General Building Contractors, Other Than Single family Houses; SIC 1531, Operative Builders; SIC 1541, General Building Construction: Industrial Buildings and Warehouses; SIC 1542, General Building Construction, Other than Industrial Buildings and Warehouses; SIC 1623, Water, Sewer, Pipeline, Communication, and Power Line Construction; SIC 1629, Heavy Construction; SIC 1711, Plumbing, Heating (Except Electrical), and Air Conditioning; SIC 1721, Painting, Paper Hanging, and Decorating; SIC 1752, Floor Hanging and Other Floorwork; SIC 1761, 1761, Roofing and Sheet Metal Work; SIC 1975, Wrecking and Demolition; SIC 1796, Installation or Erection of Building Equipment; and SIC 1799, Special Trade Contractors. The number of construction workers potentially exposed to asbestos is presented in Table 1.

B. Availability of Substitutes

The extensive tort litigation in the asbestos area and the awareness of the health effects associated with asbestos exposure has provided a strong inducement for producers and users of asbestos products to switch to substitutes. At present, however, substitute materials that are cost-effective replacements for asbestos in all applications are not available. Substitute materials have been developed for most of the primary asbestos product lines. Some of these materials, however, will not duplicate the performance of the asbestos product. To the extent that the proposed OSHA standard provides further inducement to switch to substitutes, this decline in performance will be a "hidden cost."

The replacement of asbestos in the product lines identified previously has been achieved with varying success. For example, approximately 50–75 percent of producers of phenolic molding compounds have substituted other materials such as clay or fiberglass for asbestos. Similar success has been achieved in the production of floor tile, where non-asbestos fibers and petrochemicals are being used. Replacement of asbestos in friction materials has been less promising, although the major automobile manufacturers indicate that all new automobiles will be equipped with non-asbestos brakes and clutch facings in the near future.

Fiberglass has been used as a substitute fiber for asbestos in many products. Roofing felts, pipeline felts, and asphalt coatings have all been produced using fiberglass in place of asbestos fibers.

In the past, the price of substitute materials has been much higher than the price of asbestos. The "full price" of using asbestos, which includes the potential cost of control methods, tort litigation, etc., however, has increased significantly in recent years. Hence, comparability in terms of price with many other substitute materials may have been achieved.

C. Nonregulatory Environment

Compensation Systems

Selikoff et al. have evaluated the adequacy of systems to compensate victims of occupational exposure to asbestos, particularly the Worker's Compensation System (Ex. 84–2). In many cases, they found that the worker or his or her survivors never made the connection between the occupation and the disease incurred and, hence, never filed a claim. The long latency associated with many asbestos-related diseases may contribute to the uncertainty regarding the link to the occupational exposure and may violate the time constraints for filing a claim as specified by some state programs. Overall, only 33 percent of the population of workers in the study by Selikoff and colleagues filed a Worker's Compensation claim and only 15 percent of those who filed received some benefits prior to death. Social Security was also a source of compensation for this group of workers: Approximately 66 percent of those disabled for 12–23 months, 77 percent of those disabled for 24–35 months, and 83 percent of those disabled for 3 years received some benefits from Social Security. Taking into account all sources of compensation, the average total income replacement ratio using annual after-tax income as the base was 39–40 percent.

Tort Litigation

Workers suffering from an asbestos-related disease may file a product liability suit against a third party manufacturer, processor, distributor, sales firm, installer, agency, or contractor. In many cases, however, absence of information may prohibit the initiation of a suit. For example, when a worker is removing or repairing asbestos products installed years ago, he or she may not be aware that the product is asbestos; thus, no "known" exposure will have occurred. Furthermore, because of the long latency associated with asbestos-related diseases, the link between occupation and disease is considerably less clear.

For the majority of workers who have filed suit, the basis for the legal action has been a failure by the company to warn the worker of the Asbestos hazards. Suits have been brought against producers, distributors, and users of asbestos products as well as insurance companies. MacAvoy has estimated that for the 1980–2015 period the total expected direct financial liability for these companies will be $38.2 billion (Ex. 84–12). As a consequence, the debt ratings of many of the companies involved have fallen and the insurance policies for some companies have simply been cancelled. For those plaintiffs who are ultimately compensated, the payment that they receive net of legal fees and administrative costs is a small fraction of the initial settlement of award: it has been estimated that for each $1 paid to a claimant, $3.40 is paid in legal fees (Ex. 84–369).

Although tort litigation has had a substantial impact of reducing worker exposure in certain areas, there are many industrial sectors that employ large numbers of workers who are exposed to significant concentrations of asbestos. Many of these sectors have not felt the impact of litigation. Most of the suits that were filed through 1982 involved shipyard workers, workers from primary manufacturing, and insulation workers (Ex. 84–369). Furthermore, there may be a considerable time lag before cases of cancer produce litigation that would reduce exposure levels in other industry segments.

D. Regulatory Alternatives

Industry Proposals

Asbestos Information Association Recommended Standard.—The Asbestos Information Association of North America (AIA/NA) has submitted a recommended standard for controlling asbestos exposure during construction installation work (Ex. 84–307). The AIA recommendation as it pertains to the current OSHA proposed standard would establish a method of classifying products according to their potential for releasing asbestos fibers in excess of the PEL. Given the reliance on a PEL as the trigger mechanism, the AIA classification scheme is similar to the action level approach used by OSHA for other toxic substance standards. This proposal is under consideration.

Organization Resource Counselors, Inc. Proposed Standard.—The Organization Resource Counselors, Inc. (ORC) has recommended a standard on asbestos exposure (Ex. 86–4) that raises several issues relevant to the current OSHA proposal. ORC recommends a PEL of 0.5 f/cc measured over an 8-hour TWA. The ORC proposal also recommends setting different PELs for different asbestos fiber types. This procedure is consistent with the British approach, but OSHA believes that because the lung cancer risk is the same from one type of fiber to another and since lung cancer is the major cause of asbestos disease mortality, setting different PELs for different fiber types is not appropriate.

Building Construction Trades Department, AFL–CIO.—On November 14, 1983, the Building and Construction Trades Department, AFL–CIO, submitted a proposal for an asbestos standard to OSHA (Ex. 87–2). The recommendations comprehensively address the application of an asbestos standard in the construction industry, by including provisions for many industrial hygiene program elements. They include, for example, provisions for employer competency to do asbestos work, employer reporting to OSHA all asbestos work in advance, use of competent and qualified persons on jobs, and requiring employee training, asbestos monitoring, medical surveillance and product categorization. The Building and Construction Trades Department recommends a PEL of 0.1 f/cc. OSHA is considering the applicability of these recommendations to the proposed standard.

Environmental Protection Agency Standards

The Environmental Protection Agency (EPA) has two standards that cover groups affected by the OSHA-proposed standard: Friable Asbestos Identification and Removal in Schools (40 CFR Part 763 F) and National Emission Standard for Asbestos (40 CFR 61.20). Both standards apply to removal operations of asbestos-containing materials, and since they mandate use of wet handling techniques, both are consistent with the OSHA-proposed regulation.

Alternative PELs

OSHA has considered alternative Pels of 2.0 (current level), 0.5, 0.2, and 0.1 f/cc. The evaluation of the technological feasibility and the costs and benefits are presented in the respective sections for these issues.

Sample Analysis

OSHA is considering several regulatory alternatives which would be designed to reduce the counting error during the analysis of asbestos fiber samples. OSHA may therefore mandate technical training, laboratory certification and laboratory participation in a round robin testing program. Finally, OSHA may adopt the NIOSH analytical procedure (Ex. 84–62), the procedures recommended by the AIA (Ex. 86–2), or procedures of the kind recommended by Chatfield (Ex. 84–395).

Currently, NIOSH offers a training program for asbestos fiber counters which costs $495 for members of the American Industrial Hygiene Association (AIHA) and $550 for non-members. No certification or refresher courses are offered. NIOSH also offers a Proficiency Analytical Testing (PAT) Program for laboratories to assist them in improving their analytical performance. Costs include a $50 application fee, $550 for annual accreditation and $250 plus travel expense for the visit of an approved laboratory appraiser. There are no significant cost differences between the sampling procedures recommended by NIOSH, AIA or Chatfield (Ex. 84–394).

OSHA is also considering whether to change its mandated method of sample analysis from phase contrast microscopy to either polarized light or electron microscopy methods. The advantages in changing are that polarized light methods can differentiate between non-asbestos and types of asbestos fibers while electron microscopy in addition to differentiating types of fibers can categorize fibers by length. The requirements for electron microscopy, however, are for more substantial than those for phase contrast microscopy. Thus, there are an estimated 1,000 laboratories that are equipped to analyze asbestos air samples using phase contrast methods, and 150 equipped to carry out the first level electron microscopy analysis. The costs range from $25–$30 per sample for phase contrast analysis to $50 per sample for polarized light analysis and $300–$400 for level I electron microscopy analysis (Ex. 84–394).

E. International Regulatory Environment

The risk to worker health caused by exposure to asbestos fibers has been recognized by regulatory action in many countries. The British response in 1981 to the increased awareness of the health risks associated with asbestos was to propose exposure limits of 1 f/ml for chrysotile, 0.5 f/ml for amosite, and 0.2 f/ml for crocidolite (Ex. 84–394). These limits became effective January 1, 1983. In August 1983, the British further reduced the control limit for chrysotile to 0.5 f/ml. These limits will take effect 1 August 1984 (Ex. 84–394). The British expect that all reasonable efforts will be made to keep exposures below these levels.

The Canadian Ministry of Labour produced a proposed regulation concerning asbestos, which applied the same exposure limits as the British standard. Sweden reduced the permissible fiber count to 1 f/ml of air on July 1, 1976. Furthermore, use of crocidolite was banned, as were certain uses of asbestos (i.e., sprayed asbestos and asbestos use in paint, glue, spackle, and joining materials). It was officially judged to eliminate asbestos use in the long run.

A comparison of the PELs required by various foreign standards is provided in Table 2. Also, a discussion of the treatment by these various standards of the ancillary requirements such as monitoring and medical surveillance and other issues such as respirator use and engineering controls is provided in Appendix C of the Regulatory Impact Analysis.

TABLE 2.—PERMISSIBLE ASBESTOS EXPOSURE LIMITS OF FOREIGN COUNTRIES, IN 1983

Country, province, or organization and fiber type	Permissible exposure limit (PEL)	Comments
Australia:		
chrysotile	2.0 f/ml	
Amosite	2.0 f/ml	
Belgium:		
Chrysotile	5.0 f/ml	For fibers less than 5 m in length.
Amosite	5.0 f/ml	
Crocidolite.	5.0 f/ml	
Britain:		
Chrysotile	1.0 f/ml	4-hour time-weighted average.
Amosite	0.5 f/ml	
Crocidolite.	0.2 f/ml	
Chrysotile	0.5 f/ml	After 1 August 1984.
Amosite	0.2 f/ml	Do.
Czechoslovakia:		
Chrysotile	2.0 mg/m³	When the asbestos content exceeds 10%; otherwise, the PEL is 4.0 mg/m³ (all types).
Amosite	2.0 mg/m³	
Crocidolite.	2.0 mg/m³	
Finland:		
Chrysotile	5.0 f/ml	
Amosite	5.0 f/ml	
Crocidolite.	5.0 f/ml	
Netherlands:		
Chrysotile	2.0 f/ml	
Amosite	2.0 f/ml	
Crocidolite.		
Ontario:		
Chrysotile	1.0 f/ml	4-hour time-weighted average.

TABLE 2.—PERMISSIBLE ASBESTOS EXPOSURE LIMITS OF FOREIGN COUNTRIES, IN 1983—Continued

Country, province, or organization and fiber type	Permissible exposure limit (PEL)	Comments
Amosite	0.5 f/ml	
Crocidolite.	0.2 f/ml	
Russia:		
Chrysotile	1.0 mg/m³	When the asbestos content exceeds 70%; otherwise the PEL is 2.0mg/m³ when the content is over 10%, and 4.0 mg/m³ when over 2% (all types).
Amosite	1.0 mg/m³	
Crocidolite.	1.0 mg/m³	
Sweden:		
Chrysotile	1.0 f/ml	
Amosite	1.0 f/ml	
Crocidolite.	0.0 f/ml	Banned completely since 1976.
Switzerland:		
Chrysotile	1.0 mg/m³	
Amosite	1.0 mg/m³ D	
Crocidolite.	1.0 mg/m³	
International Labour Office (Draft Code).		Airborne asbestos levels should not exceed limits approved by the "competent authority" of the member nation.
European Economic Community: (Asbestos Directive):		
Crocidolite.	0.2 f/ml	8-hour time-weighted average.
All other Forms.	1.0 f/ml	

Source: JRB Associates Inc., "Support Document for Portions of OSHA's Regulatory Impact Assessment on Asbestos," Mclean, VA., 1983

It is clear that considerable momentum has been established in the international arena towards implementing reductions in worker exposure to asbestos. The International Labor Organization through its Secretariat, the International Labor Office, promulgated a draft Code of Practise which was drawn up by a Meeting of Experts in October 1983 (Ex. 84–412). The International Labor Organization is a tripartite organization made up of labor, industry, and government representatives from each member country. As such, the draft Code of Practice represents a considerable achievement in obtaining consensus among these representatives, following a long history of discussion and debate (Ex. 84–400). Furthermore, although this draft Code is voluntary, it has been placed on the formal agenda of the Conference in 1985 and, therefore, may be the precursor to adoption of an International Convention which does not have binding force upon member countries.

In another related development, the European Economic Community promulgated a directive regarding worker exposure to asbestos (Ex. 84–397). This directive will come into force in member states on January 1, 1987. The specific provisions of this document are also included in the discussion in Appendix C of the Regulatory Impact Analysis.

F. Technological Feasibility

Primary Manufacturing

The production of asbestos products can be divided into receiving (unloading, transporting, and storing the raw asbestos fiber) and processing (mixing, drying, and finishing). The technological feasibility of the compliance activities associated with reducing the exposure level during these two production stages are discussed separately. Feasibility of complying with other elements of the standards are discussed at the end of this section.

Receiving.—Several methods of control and several newly developed packaging techniques would reduce asbestos exposure problems in the receiving areas. These include: lined rail cars, palletized loading, pelletized or blocked asbestos fibers, and double-sealed bags. Use of fully containerized shipments as opposed to shipment in bags would further reduce the exposures that occur when bags are damaged. If these control methods and proper work practices are implemented, then OSHA expects that the levels of exposure could be maintained below 0.3 f/cc TWA (Ex. 84–9, III–21).

Introduction.—The exposure during fiber introduction could be adequately controlled if the bags or containers of asbestos were opened by machine. If the bags or containers are opened manually, a semi-enclosed local exhaust ventilation system would be necessary to limit fiber emissions. Using these control methods and proper housekeeping, it is exected that the exposure level could be reduced to 0.4 f/cc TWA (Ex. 84–9, III–27).

Processing.—Fiber loss during mixing can be reduced by negative pressure, which is generally connected to a local exhaust dust control system. Complete enclosure of the mixer is also a method that can be used to reduce exposures during this step. During the cutting, sawing, and finishing steps, the installation of local exhaust and hooding could reduce exposures. Special tools, such as single-point cutting tools, could reduce fiber emissions during particular activities. In addition, regular vacuuming and good housekeeping practices would be necessary to limit exposures resulting from spillage.

After a review of attainable and reported exposure levels and control technology, OSHA expects that, except for the dry-woven textile segments, the primary manufacturers of asbestos products can achieve average exposures of 0.2 f/cc in the processing area (Ex. 84–9). In the dry-woven textile segments, it is believed that exposure levels cannot be reduced significantly below 1.0 f/cc without major breakthroughs in technology (Ex. 84–9, III–43). OSHA will solicit comment on the technological feasibility for all segments in primary manufacturing during the public hearing.

Secondary Manufacturing

The production processes in secondary manufacturing are similar to those in the end processes of primary manufacturing, viz., sawing, cutting, grinding, punching and drilling operations. OSHA assumes, therefore, that the same control techniques would apply. Hence achieving levels of 0.2 f/cc should be technologically feasible using existing equipment methods.

Automotive Aftermarket

The exposures in the automotive aftermarket occur primarily during refacing and rebuilding of friction materials and during general brake repair. Most establishments that rebuild asbestos friction parts have installed controls. In those few establishments where some raw asbestos may be used, the control methods available in primary manufacturing for similar processes could be used.

In brake repair operations, the main source of high exposure levels is the practice of cleaning out brake drums by using blown air. Other methods of cleaning out brake drums are available. Engineering control methods for cleaning brake drums utilize semi-portable or centralized vacuuming systems. Work practice methods include cleaning the drums with a stream of water or a wet rag. Through the use of these control methods and equipment, exposures could be reduced below 0.1 f/cc. Hence, no technological constraints are anticipated.

Shipbuilding and Ship Repair

Asbestos exposures during shipbuilding are currently being reduced through the use of substitutes for asbestos products. The movement toward prefabrication in ships where adequate controls are available is also contributing to exposure control. Ship repair, on the other hand, includes removal or refurbishing of old asbestos products on site (which is generally a narrow, small compartment). OSHA believes that the control techniques available for demolition activities could

be applied when asbestos products are removed. Since wet handling and ventilation procedures are not always practicable due to the confined space, OSHA anticipates that respirators will be necessary to meet reduced PELs. The refurbishing process in ship repair generally uses prefabricated materials where possible. Some limited finishing, however, may be necessary on site. It is expected that the control methods available for the finishing activities in construction could be used to reduce exposures during ship repair or that respirators will be used. Thus, no technological constraints are anticipated.

Construction

Engineering controls for construction activities include local exhaust ventilation systems, substitution of a non-asbestos product, and modification or isolation of a process. The installation of local exhaust ventilation systems on power tools or the use of mobile vacuum units could reduce the emission of asbestos fibers during cutting and finishing activities. Because some work sites are continually moving as the work progresses, the development and use of portable equipment would be necessary. Prefabrication where possible may limit the exposures to asbestos; some fitting and finishing, however, may still be necessary on site and, thus, exposures would still occur. Wet cutting could also be used to reduce exposures, although the reduced productivity due to the messy work conditions and the danger of electrical shock may limit adoption of this alternative. Repair, maintenance, and demolition activities could use an amended water method when asbestos materials are to be removed or altered. The wetting of the material significantly reduces the exposure levels by limiting the initial creation of dust and its subsequent entrainment in the air.

OSHA expects that these activities in conjunction with good work practices would significantly reduce asbestos exposure. In many cases, however, these control methods may be sufficient to achieve the proposed OSHA PEL or ceiling limit. Hence, the use of respirators would be necessary. Technological feasibility, however, is not expected to be a limiting factor.

Health Effects

The deleterious health effects of exposure to airborne asbestos fibers has been discussed in detail at 48 FR 51086, November 4, 1983. Inhalation of asbestos fibers has been associated with three clinical conditions: Asbestosis, mesothelioma (a cancer of the lining of the chest or abdomen) and lung cancer. Many studies have also observed increased gastrointestinal cancer risk, and risk from cancer at other sites such as the larynx, pharynx, and kidney is also suspected.

Initial exposure limits for asbestos were based on efforts to reduce asbestosis which has been long known to be associated with asbestos exposure. The reduction in the number of cases of asbestosis, however, may have resulted in workers living long enough to develop cancers which are now recognized to be associated with asbestos exposure. The discussion of benefits associated with a reduction in the PEL, therefore, focuses on number of cancer cases avoided. The results are expressed in terms of deaths avoided because these cancers almost always result in death within 1–2 years.

The benefits from a reduction in the PEL depend upon current exposure levels, the number of workers exposed and the risk associated with each exposure limit. The current ambient air levels estimated by OSHA and the estimated number of workers exposed to asbestos are presented in Table 1. The lifetime risk of lung cancer, mesothelioma and gastrointestinal (G.I.) cancer was estimated by OSHA and is presented in Table 3 for exposure periods of 1, 20, and 45 years.

The estimated number of cancer deaths avoidable by reducing exposure levels are presented in Table 4. A summary of the cancer deaths avoidable by reducing exposures in each major industry sector is presented in Table 5.

TABLE 3.—EXCESS NUMBER OF DEATHS FROM CANCER PER 100,000 MALE WORKERS EXPOSED TO ASBESTOS FOR 1, 20, OR 45 YEARS AT VARIOUS EXPOSURE LEVELS

Exposure level (f/cc)	1-year duration of exposure			20-year duration of exposure			45-year duration of exposure		
	Lung cancer	Mesothelioma	G.I.[2]	Lung cancer	Mesothelioma	G.I.[2]	Lung cancer	Mesothelioma	G.I.[2]
0.1	7.2	6.9	0.7	139	73	13.9	231	82	23.1
0.15a [1]	10.8	10.4	1.1	208	110	20.8	346	123	34.6
0.2	14.4	13.8	1.4	278	146	27.8	460	164	46.0
0.5	36.1	34.6	3.6	692	362	69.2	1,143	447	1,143.3
0.75 a [1]	54.2	51.9	5.4	1,038	543	103.8	1,714	610	171.4
1.0a [1]	72.2	69.2	7.2	1,384	724	138.4	2,286	814	228.6
1.5 [1]	108	104	10.8	2,076	1,086	207.6	3,429	1,221	342.9
2.0	144	138	14.4	2,713	1,408	271.3	4,416	1,554	441.6
5.0	360	344	36.0	6,509	3,317	650.9	10,318	3,547	1,031.8
10.0	715	684	71.5	12,177	6,024	1,217.7	18,515	6,141	1,851.5
20.a [1]	1,430	1,368	143.0	22,354	12,048	2,235.4	37,030	12,282	3,703.0

[1] Risk estimates associated with exposure levels of 0.15, 0.75, 1.0, 1.5, and 20.0 f/cc were calculated by JRB; the risk estimate for such exposure level is based on a proportional increase in the risk from the next lower exposure level. A linear relationship between exposure level and risk is assumed.

[2] The estimate of mortality risk from gastrointestinal tract cancer is one-tenth the risk of mortality by lung cancer (OSHA's quantitative risk assessment, Document No. HO 336, exhibit No. 84–349). The age at first exposure is assumed to be 25 for all risk estimates.

Source: JRB Associates; McLean, Va., October 1983; based on OSHA's quantitative risk assessment (Docket No. HO 336, Exhibit No. 84–349).

TABLE 4.—ESTIMATED NUMBER OF CANCER DEATHS AVOIDABLE BY REDUCING CURRENT INDUSTRY EXPOSURES TO EACH OF FOUR ALTERNATIVE ASBESTOS PERMISSIBLE EXPOSURE LEVELS (PEL)[1]

Alternative PEL f/cc	1-year duration of exposure				20-year duration of exposure				45-year duration of exposure			
	Lung cancer	Mesothelioma	G.I. cancer	Total	Lung cancer	Mesothelioma	G.I. cancer	Total	Lung cancer	Mesothelioma	G.I. cancer	Total
0.5	209	199	21	429	3,584	1,783	358	5,725	5,439	1,834	544	7,817
0.2	217	207	22	446	3,802	1,896	380	6,080	5,898	2,000	590	8,488
0.1	233	222	23	478	4,069	2,037	407	6,513	6,361	2,165	636	9,162

[1] Numbers rounded for presentation; all calculations were performed on unrounded numbers.
G.I. = Gastrointestinal.

Source: JRB Associates; based on OSHA's quantitative risk assessment (Docket No. HO 336, Exhibit No. 84–349).

TABLE 5.—ESTIMATE OF ALL CANCER DEATHS AVOIDED AT THREE PEL'S BY INDUSTRY SECTOR [1]

Industry segment	Assuming 1 year exposure			20 years exposure			45 years exposure		
	PEL (f/cc)			PEL (f/cc)			(PEL (f/cc)		
	0.5	0.2	0.1	0.5	0.2	0.1	0.5	0.2	0.1
Primary manufacturing	8	10	13	117	172	200	174	257	303
Secondary manufacturing	31	39	43	471	586	624	684	855	912
Automotive aftermarket	8	11	24	134	162	370	194	235	543
Shipbuilding/repair [2]	1	2	2	29	49	55	41	70	82
Construction [3]	378	385	396	4,974	5,109	5,262	6,722	7,071	7,323
Totals	426	447	478	5,725	6,078	6,511	7,815	8,488	8,163

[1] This table assumes exposures are reduced only to the designated PEL. The number of lives saved by promulgation of the lower PEL may be understated if control methods or respirators reduce exposures below the PEL in some industrial situations. However, in situations where respirators are used to effect compliance, the number of lives saved may be overstated if the respirators are not fully protective or are not consistently used.

[2] OSHA assumes that 80 percent of workers in the ship repair section are protected by respirators and only 20 percent may be exposed to the estimated ambient air level.

[3] OSHA assumes that 25 percent of construction workers may be exposed to the estimated ambient air levels.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, November 1983.

Summary of Costs

The costs of compliance are examined at three PELs: 0.5, 0.2, and 0.1 f/cc. OSHA has examined two sets of compliance costs. First, compliance costs associated with using engineering controls to reduce exposures from 2 f/cc and, where necessary for supplemental protection, the cost of a respirator program. Second, the cost of using only respirators to reduce exposures from the estimated current exposure to each of the PELs under consideration. For purposes of estimating engineering control costs, OSHA assumes that primary manufacturing, secondary manufacturing, and refacing operations are in compliance with the current 2 f/cc PEL and that brake repair, ship repair, and construction industries are not fully in compliance with the current standard.

OSHA assumes that primary manufacturers, except for textiles, can achieve exposure levels as low as 0.2 f/cc through stringent application of current engineering controls but would have to implement a respiratory program to achieve a 0.1 f/cc PEL. Textile producers, however, would only be able to achieve exposure levels of 1 f/cc through engineering controls. Compliance costs for engineering controls were not estimated for secondary manufacturers due to the lack of specific information regarding production processes and abatement controls. Instead the cost of implementing a respirator program for those industries and workers identified as secondary manufacturers was estimated. For purposes of worst-case analysis, OSHA assumes no respirators are currently in use.

In the automotive aftermarket, it is expected that exposure levels as low as 0.2 f/cc can be achieved through application of engineering controls in the refacing section, but that respirators would be required to be used to achieve a level of 0.1 f/cc. The general repair sector can achieve 0.1 f/cc levels through the use of engineering controls. In shipbuilding and ship repair, the highest exposure levels occur during insulation removal operations. The ship repair sector cannot achieve levels below 2.0 f/cc through engineering controls and therefore must continue to rely on respirators to achieve compliance. OSHA assumes the shipbuilding sector already achieves levels below 0.5 f/cc through the use of engineering controls and by using substitute materials for asbestos.

The aggregate costs for all the industries that have been discussed above are presented in Table 6. These costs are based on the assumption that the best engineering controls available are the methods used to achieve compliance and that none of these controls are as yet in place. To the extent that different work practices can substitute for engineering controls, i.e., the automotive general repair sector where methods of cleaning brake drums using water may reduce exposures to the 0.1 to 0.2 f/cc level, and to the extent that engineering controls are already in place, the costs are overstated. The substantial incremental cost for achieving a PEL of 0.1 f/cc compared to 0.2 or 0.5 is largely the result of instituting respirator programs. In particular, the necessity to upgrade the respirators for construction workers engaged in asbestos removal operations and to provide them with bottled air accounts for much of the cost differential. To the extent that different work practices, i.e., wetting the asbestos-containing material prior to handling, would reduce the air concentration of asbestos fibers to a level such that air-line respirators would not be necessary, these costs are overstated.

TABLE 6.—TOTAL AGGREGATE COST FOR AFFECTED SECTORS [1]

[In thousands of 1982 dollars]

Industry sector	PEL (f/cc)					
	0.5		0.2		0.1	
	First year	Annual	First year	Annual	First year	Annual
Primary manufacturing	40,393	25,462	132,529	51,379	156,135	63,844
Secondary manufacturing	19,620	13,369	19,620	13,369	22,471	15,048
Automotive aftermarket	177,385	70,716	184,475	72,996	186,646	74,497
Shipbuilding and ship repair	971	885	2,330	2,080	2,330	2,080
Construction	29,214	23,215	34,972	29,914	443,266	422,367
Total	267,583	133,647	373,926	169,738	810,848	577,836

[1] Includes cost of warning signs and employee training in asbestos safety.

Note.—First year costs include total capital costs and operating costs for one year, while annual costs include annualized capital costs and annual operating costs.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, 1983.

OSHA is considering allowing flexibility in the methods chosen to achieve compliance with a PEL below 2 f/cc. Rather than considering respirators as a supplemental method to be used only after engineering controls and work practices have achieved maximum feasible results, OSHA is considering allowing respirators to be used in place of engineering controls or work practices to reduce worker exposure from a TWA of 2 f/cc to the lower PELs of 0.5, 0.2, or 0.1 f/cc. Engineering controls and work practices, however, remain the mandated methods of achieving air concentrations of 2 f/cc (TWA). For purposes of worst-case analysis, OSHA assumes that no

respirators are currently in use except in ship repair and construction. Since the estimated current air concentrations are used to determine which respirator would be required, these costs are not exactly comparable to the costs calculated above for engineering controls, which assumed that most industries had asbestos air concentrations of 2.0 f/cc.

The types of respirators needed for each industry sector were determined using the respirator selection table with reference to the estimated current exposure conditions. OSHA assumed that the least costly approved respirator would be selected. For example, where industries have exposures less than 10 times the PEL, OSHA anticipated that disposable respirators would be purchased, because of their lower short-term costs. When exposures exceeded 10 times the PEL, OSHA assumed that some plants would either use air-line respirators, or full facepiece respirators, depending on the operation. To the extent that firms choose a higher-cost respirator to increase the protection factor or durability, respirator costs may be understated. Furthermore, OSHA has not included in the cost analysis a consideration for lost worker productivity due to wearing respirators. Costs may be understated by whatever amount productivity is reduced. Other necessary respirator program elements are included such as training, administrative costs, medical exams and fit tests.

The aggregate industry costs for complying through implementing respirator programs are presented in Table 7. The cost are overstated to the extent that some firms already have a current respirator program and to the extent that careful application of existing engineering controls and work practices would reduce concentrations in some firms to the PEL and thereby make respirator use unnecessary. Futhermore, the costs assume that dust masks will have to be replaced after every 8-hour day and filters after a 40-hour week. As is the case for the aggregate costs presented for engineering controls, the large difference between costs at 0.1 f/cc and the other PELs is attributable to the cost of using bottled air with air-line respirators in the demolition/renovation segment.

TABLE 7.—TOTAL INDUSTRY COSTS FOR ACHIEVING COMPLIANCE USING RESPIRATORS

[In thousands of 1982 dollars]

Industry sector	PEL					
	0.5		0.2		0.1	
	First year	Annual	First year	Annual	First year	Annual
Primary manufacturing	9,007	8,000	10,124	8,917	15,167	13,047
Secondary fabricators [1]	17,489	12,281	17,489	12,281	19,627	13,712
Automotive aftermarket	2,385	1,610	2,385	1,610	140,279	109,081
Shipbuilding repair	698	643	2,057	1,838	2,057	1,838
Construction	31,215	26,684	31,215	26,684	428,374	405,097
Warning signs [2]	294	78	294	78	294	78
Asbestos training [2]	5,075	4,470	5,075	4,470	5,075	4,470
Total—All segments	66,163	53,766	68,639	55,878	610,873	547,323

[1] These costs are slightly lower than those in Table 6 due to rounding differences between two methods of calculating the totals, and because the cost of warning signs and training are presented in each segment in Table 6 rather than being presented separately as here.

[2] These are the same costs for all segments as described in the first section.

Note.—First year costs include total capital costs and operating costs for one year, while annual costs include annualized capital costs and annual operating costs.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, September, 1983.

Best Estimate: Methods and Costs of Compliance

The following discussion presents an analysis of the probable methods of compliance based on the estimated current exposure levels. However, since no current surveys have been conducted to ascertain industry practices, quantification of a best estimate is not presently possible. The cost estimates presented in the first section represent a worst-case analysis using the air concentrations represented by the current PEL of 2 f/cc as the baseline for comparison for most segments. The second section presents the costs for a respirator program using the estimated current practices as the baseline, but assumes no improvement in work practices or engineering controls. Although no better quantitative results are available at this time, OSHA believes that it is reasonable to outline the areas where these estimates may be exaggerated.

Primary Manufacturing.—The estimated current exposure levels for all segments in primary manufacturing are under 2 f/cc. This fact indicates that engineering controls are currently in place in some plants. Reducing exposure levels to 0.5 f/cc may only require improved work practices in many of the plants and achieving 0.2 f/cc levels may only require the incremental costs between 0.5 and 0.2 f/cc rather than the full costs. Furthermore, most plants in primary manufacturing presently experience short-term air concentrations above the current peak. It is likely, therefore, that most facilities have some or all of the elements of a respirator program. Therefore, the incremental costs atributed to respirators may be reduced to the costs of expanding whatever program is already is place.

Secondary Manufacturing.—Little information currently exists regarding compliance methods for this sector, OSHA, however, has assumed that exposures are at 2 f/cc except in textile fabricating and that no measures for compliance have been undertaken. Many of the production activities associated with secondary fabrication, however, are similar to those in primary industry and in construction installation of new materials. The production process involves punching, drilling, cutting, and sawing the asbestos product. While these activities generate high amounts of dusts, they also lend themselves to engineering controls such as attaching local vacuums and shrouds to the tools and installing ventilation systems in the plants. To the extent that such controls are in use or that respirator programs exist, the costs as presented above would be overstated.

Automotive Aftermarket.—For the refacing sector, OSHA has assumed that no controls are currently in place. However, current exposure data suggests that this is not true for all facilities (Ex. 84–304). In fact some facilities may have exposure levels as low as 0.02–0.37 f/cc (Ex. 84–304). To the extent that these levels are representative of the industry, incremental costs for achieving PELs of 0.5 or 0.2 f/cc may be minimal.

For the general repair sector, OSHA has assumed the use of vacuum systems for brake cleaning to achieve compliance with reduced PELs. Exposures to high levels occur for brief periods during the brake cleaning method that uses blow-out by compressed air. Several alternate work practice methods exists, however, which can reduce the peak concentration levels to below 1.0 f/cc. If these methods were used in combination with half-mask respirators, the compliance costs would be substantially reduced.

Shipbuilding and Ship Repair

For purposes of estimating the impact of the proposed standard, OSHA has assumed a 20 percent failure of compliance in this section. To the extent that this is overestimated, the costs are overstated. Further, as asbestos-containing products are phased out of shipbuilding, the exposure levels during ship repair will decrease.

Construction

The costs presented above were developed under the assumption that no engineering controls were in place and no respirators were used in the installation of new materials sector. Since the industry-recommended work practices for handling asbestos recommend these methods outlined (Ex. 84–307), is is likely that at least some firms would be in compliance. To that extent, the costs have been overstated.

Finally, for removal activities OSHA has assumed a 25 percent rate of non-compliance with the current standard. Some information suggests that this figure may be too low (Ex. 84–394). Costs may, therefore, be understated. OSHA has also assumed, however, that the air concentration would be those associated with dry removal methods. To the extent that conscientious work practices and wet handling methods are used, upgrading respirators to air-line respirators to meet a PEL of 0.1 f/cc may not be necessary in all cases. Thus, these costs may be overstated to some extent.

Economic Impact

The expected cost of compliance for the alternate PELs of 0.5, 0.2 and 0.1 f/cc were presented above. The economic impact can be examined by determining the average annual cost per employee and per plant and the ratio of cost to sales receipts or payroll for each segment. For purposes of worst-case analysis, OSHA will examine the potential impact of the costs of engineering controls as presented above.

The average annual cost per employee to achieve a PEL of 0.2 f/cc varies in primary manufacturing between $2,540 in floortile, and $9,273 in asbestos-cement pipe, is $777 in secondary fabricating, varies in the automotive aftermarket between $42 in terminal and joint terminal maintenance and $1,281 in motor vehicle parts and accessories, is $683 in shipbuilding and ship repair and varies in construction between $0 in roofing and repair and maintenance to $1,468 in demolition.

The average annual cost per employee to achieve a PEL of 0.5 f/cc varies in primary manufacturing between $659 in painging, coatings and sealants and $2836 in asbestos-cement sheet, is $777 in secondary fabricating, varies in the automotive aftermarket between $42 in terminal and joint terminal maintenance and $724 in motor vehicle parts and accessories, is $291 in shipbuilding and ship repair and varies in contruction between $0 in roofing and repair and maintenance to $1,468 in demolition.

The average annual cost per firm to achieve a PEL of 0.2 f/cc also varies. In primary manufacturing the cost ranges from $75,600 per plant in paintings, coatings and sealants, to $861,071 in floor tile. The cost per firm is secondary fabricating would be $3,106. The cost would vary in the automotive aftermarket between $444 in gasoline stations, general automotive repair and automotive repair shops and $37,436 in motor vehicle parts and accessories. The cost would be $54,737 per shipyard. In construction the average annual cost would vary between zero in roofing and repair and maintenance and $14,676 in demolition.

The average annual cost per firm to achieve a PEL of 0.5 f/cc also varies. In primary manufacturing the cost ranges from $17,800 per plant in paintings, coatings and sealants to $380,000 in floor tile. The cost per firm in secondary fabricating would be $3,106. The cost would vary in the automotive aftermarket between $444 in gasoline stations, general automotive repair and automotive repair shops and $21,150 in motor vehicle parts and accessories. The cost would be $23,289 per shipyard. In construction the average annual cost would vary between zero in roofing and repair and maintenance and $14,676 in demolition.

Annual cost is compared to different data for each segment, depending on what statistics are available in each segment. The ratio of annual cost to achieve a PEL of 0.2 f/cc to annual sales in 1977 dollars for primary manufacturing would be less than 4 percent in all sectors. The ratio of annual cost in 1977 dollars would be less than 1 percent in secondary fabricating. For the automotive aftermarket, the ratio of annual costs compared to annual payroll in 1977 dollars would be less than 2 percent for all SIC codes except gasoline service stations and general automotive repair where it would be less than 4 percent. The ratio of annual costs in shipbuilding and ship repair compared to value of work completed in 1978 dollars would be less than 1 percent. In the construction industry the average annual compliance cost per worker compared to average annual receipts per worker in 1977 dollars would be less than 2 percent except in demolition where it would be 3.9 percent.

To achieve a PEL of 0.5 f/cc, the ratio of annual cost to annual sales in 1977 dollars for primary manufacturing would be less than 4 percent in all sectors and less than 1 percent in most sectors. The ratio of annual cost in 1977 dollars would be less than 1 percent in secondary fabricating. For the automotive aftermarket, the ratio of annual costs compared to annual payroll in 1977 dollars would be less than 1 percent for all SIC codes except gasoline service stations and general automotive repair where it would be less than 4 percent. The ratio of annual costs in shipbuilding and ship repair compared to value of work completed in 1978 dollars would be less than 1 percent. In the construction industry the average annual receipts per worker in 1977 dollars would be less than 1 percent except in demolition where it would be 3.9 percent.

The ratios represent the degree to which prices of the products or services would have to increase in order to pass through compliance costs or the additional proportion of costs which would have to be absorbed by the firm if costs could not be passed through. If compliance costs are overestimated, then these ratios may be even smaller than estimated above.

Foreign Trade Effects

It is difficult to isolate the potential effects of a reduced PEL on foreign trade due to the existence of other strong influences. In general, as the detrimental effects of asbestos have become more widely known through publicity and litigation, a widely-based movement has developed to reduce exposures to asbestos. This movement has resulted in a search for viable substitutes in most countries in which production or use of asbestos-containing products takes place. The section on the international regulatory environment has discussed the various standards and proposals in detail. In particular, Canada has followed the direction taken by Great Britain which reduced the permissible exposure level to chrysolite to 1.0 f/cc and then further to 0.5 f/cc and has virtually eliminated use of other forms. Further, the British have stressed that there is no known safe level and these exposure levels represent a ceiling limit. The overall effect of this international concern, in particular, the Canadian response since Canada is our largest single importer, is that the demand for U.S. exports may be reduced over time, independent of the results of any action promulgated by OSHA.

The immediate concern for the price effects of the proposed standard can be addressed through looking at the short term effect of increased prices for U.S. goods on the demand for U.S. asbestos exports. Most countries, including Canada, show that the price of U.S. goods increased in 1981 and 1982 compared to each preceding year due to fluctuations in the exchange rate. The value of imports and exports of asbestos-containing products, however, moved independently of this price increase. These data suggest that, in the short-run, the effects of any price increases should be masked by the impact of other forces.

Regulatory Flexibility Assessment

Pursuant to the Regulatory flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 60 et seq.), the Assistant Secretary has assessed the expected impacts of the proposed standard on small entities in each of the affected sectors.

OSHA is considering allowing the employer flexibility in choosing methods of compliance to reduce exposure levels from 2 f/cc to the proposed PEL. OSHA expects that small entities could substantially reduce their compliance costs by substituting suitable work practice methods in place of capital methods or respirator programs. Consequently, OSHA concludes there will be no adverse impacts on small entities.

VIII. Environmental Impact

OSHA has reviewed the proposed revisions to the asbestos standard and has concluded that no significant environmental impacts are likely to occur as a result of promulgation of this action. OSHA, of course, reserves the right to perform any additional environmental analyses that may be required as a result of information and comments received in response to this Notice.

The preceding description of the proposed standard and its supporting rationale, together with the following discussion, constitute a summary of OSHA's environmental assessment and finding of no significant impact. This assessment has been prepared in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4325 et seq.) as well as that of the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500), and DOL-NEPA Compliance regulations (29 CFR Part 11). Copies of the environmental impact assessment are available from the OSHA Docket Office (Docket No. H-033C).

In any OSHA regulatory action, two environments may be impacted upon: (1) The workplace environment and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, and energy, and land use. Usually, OSHA regulations have their most significant impacts on the workplace environment, because this environment is under the Agency's jurisdiction. These impacts have been beneficial to the workplace environment because they have reduced worker exposure to toxic and carcinogenic substances. An in-depth discussion and analysis of the occupational nature of asbestos disease, the workplace environment, and the benefits to workers as a result of the proposal are presented in earlier sections of this Notice.

In most cases, the effects of previous OSHA regulations on the external environment have been negligible because of their limited scope and application. The following sections summarize what are believed to be the limited potential environmental impacts that could result from provisions established by the proposed policy, such as the reduction in the permissible exposure limit (PEL), the compliance methods to achieve the reduced limit, work practices, and training.

Impact of the Regulation on the External Environment

Air Pollution

As an air pollutant, asbestos is important because it has been established that exposure by inhalation results in asbestos-related disease and cancer. Asbestos has a stable chemical composition and can be reentrained into the atmosphere. Because asbestos is used extensively in a variety of processes and products, the opportunity for its release into the atmosphere can occur at numerous points in asbestos manufacture and use. For example, asbestos fibers can be released during mining and milling operations, in primary and secondary manufacture, during construction and demolition, during disposal, and during extended periods of use.

Asbestos emissions can also occur from the numerous processes used to manufacture products containing asbestos. The control techniques implemented to contain emissions vary according to the process involved. For example, emissions can be controlled through the use of gas-cleaning devices, wetting agents and surface coatings, and by capturing and filtering devices such as baghouses, electrostatic precipitators, and wet scrubbers.

Under the proposed regulation, the permissible limit of exposure would be reduced from 2.0 f/cc to either 0.2 f/cc or 0.5 f/cc. In some operations, compliance to meet the PEL might be achieved by increased engineering control measures, including local exhaust ventilation and consequent fabric filter collection. This would improve the work environment and, in cases where no such controls were previously in existence, could potentially benefit the ambient atmosphere by reducing the level of airborne emissions that might otherwise be released. Where these controls are already in effect, there will be no significant change in the ambient atmosphere.

Where gas-cleaning devices such as baghouses continue to be used, the fibers would continue to be collected with the same current 99.9 percent efficiency rate, with no resultant change in ambient air emissions. In instances where less asbestos is used in a process as a means of achieving compliance, there would be a potential for fewer fibers to be vented to the outside atmosphere. Where wet processes and portable collection devices are used more extensively as a result of this rulemaking—for example, in construction and demolition work practices—the amount of fibers released into the ambient atmosphere would be reduced.

As with other Agency actions, reducing the worker exposure level to asbestos will benefit primarily the workplace environment. In certain instances, there may be some potential for reducing ambient air emissions with the introduction of particular control devices. For example, in the automotive aftermarket, the use of local vacuums or centralized vacuum systems would effectively reduce ambient levels of asbestos. Generally, most industry operations already use engineering controls to meet the present PEL and to comply with EPA's emissions standards (Ex. 84-414). Consequently, controls already in place are anticipated to continue to operate effectively in reducing emissions under the proposed PEL. In any event, irrespective of the type of controls implemented to meet the PEL, no significant adverse effect on air quality is expected to occur as a result of the proposal, and in cases where respirators are used to comply with the standard, there will be no effect on the ambient atmosphere.

Water Pollution

As a water pollutant, asbestos occurs naturally in ground formations, which can cause contamination of surface

waters, rivers, and ground waters through erosion. Asbestos fibers can also contaminate water systems as a result of leaching from asbestiform deposits or from myriad commercial applications. Contamination can also result from disposal of asbestos waste, such as effluents that are discharged directly into water systems, emitted to the atmosphere, or disposed of in landfills and then later enter surface or ground waters. The following paragraphs illustrate instances where asbestos may be present as wastewater effluents.

During asbestos manufacturing and mining/milling processes, fibers are often released into surface waters by wastewater discharges, particularly from those that are improperly disposed of. The Reserve Mining case of Duluth, Minnesota, serves to illustrate the effects of improper discharge. During 1955–1974, Reserve Mining dumped 200 million tons of taconite tailing containing asbestos into Lake Superior. Tests performed on Duluth's drinking water in 1974 showed that the number of asbestos fibers present amounted to 948,000 per liter (5 microns in length) and were from 10 to 100 times greater than ever found before in public drinking water (Ex. 84–415). In neighboring cities, fiber counts in drinking water were as high as 2.6 million per liter (Ex. 84–416).

Insufficient data make it difficult to assess the potential for asbestos contamination of water systems, but some studies have shown that plants manufacturing asbestos paper products have the greatest potential for contamination of surface waters (Ex. 84–417, p. 176). This most likely is due to the large amounts of asbestos raw materials used and the wet processes associated with the manufacture of asbestos paper products. It is estimated that the discharge of raw water from paper manufacturing processes contains approximately 19 pounds of suspended solids per ton of paper product (Ex. 84–417, p. 169). Also, an estimated 46–98 short tons of asbestos fibers are released to surface waters from paper manufacturing wastewaters.

The manufacture of asbestos-cement pipe also involves wet processes that discharge asbestos effluents. It has been calculated that about 6.3 pounds of suspended solid per ton of product are present in the raw water discharged from a typical asbestos-cement manufacturing process (Ex. 84–417, p. 120), while the total water effluent discharge amounts to about 12 tons per year (Ex. 84–417, p. 123). The suspended solids that are collected in clarifiers are usually coated, or encased, in cement and tend to solidify. For this reason, when these fibers are transported to landfills they rebound in a cement matrix, making release of the buried fibers unlikely.

In recent year, the use of asbestos-cement pipe for water conduits has been questioned in terms of the potential for release of fibers into potable water systems. Various studies (Ex. 84–418; 84–419) have been conducted on asbestos-cement pipe in an effort to determine if asbestos fibers are released from the pipe into public drinking water supplies and, if so, to establish a correlation between ingestion of these fibers and any increased incidence of gastrointestinal cancer.

Keeping these examples in mind, one can consider the potential impacts of the proposal on wastewater effluents. Under the prposed regulation, it is unlikely that there would be any significant increase in the amount of asbestos discharged in wastewaters, thereby having any significant impact on the external environment. To illustrate, to the extent that manufacturers change to wet-processing methods or that other industries increase wetting down procedures, there is a potential for an increased use of water and resultant increased amounts of wastewater containing asbestos, or increased amounts of suspended solids disposed of as waste. Lack of data, however, makes it difficult to determine to what degree this will occur and if it would significantly affect the environment. Moreover, any such occurrence could be offset, depending on the types of treatment facilities manufacturers use. In many cases, plants recirculate water from wastewater treatment facilities to the process, resulting in less effluents discharged.

In operations such as construction and demolition, asbestos-containing products are frequently wetted down in order to repair or tear out materials. In wetting down to reduce the levels of airborne asbestos, the once airborne fibers become effluents in wastewater run-off. In these types of operations, both the current OSHA standard and EPA regulations (Ex. 84–414) require work practices for the proper handling, sealing, storing, and disposing of any associated waste, debris, or wastewater. These regulations would not change as a result of the proposal, and consequently, such operations would not necessarily contribute to any increase in the amount of pollutants in wastewater run-off. To the extent that wetting down practices increase as a result of the proposal, however, there would be a potential for increased asbestos effluents in wastewater run-off at these sites. The overall net additional contribution to water pollution from these practices is generally not considered to be significant, however.

In cases where wastewater is discharged into local sewer systems, the proposed regulation would not significantly affect the amount of fibers discharged. EPA's effluent limitations guidelines (40 CFR Part 427 in 39 FR:526–7535, February 26, 1974; 40 FR:1874–1878, January 9, 1975; 40 FR:6444, February 11, 1975; FR 40:18172, April 25, 1975) include: (1) Standards of performance for all new point sources within specified categories of asbestos manufacture and (2) pretreatment standards for new plants discharging to municipal sewer systems. These limitations would serve to prevent the direct discharge of effluents into the environment without prior treatment. Moreover, the Federal Water Pollution Control Act Amendments of 1972 required that wastewater effluents be treated by the best practicable control technology (BPT) by December 31, 1977, and that the best available technology (BAT) economically achievable be used by December 31, 1983. The EPA effluent limitations establish the degree of effluent quality necessary to meet the BPT and BAT requirements. The BAT and pretreatment standards would essentially mean no discharge of process wastewater to navigable waters and no discharge of incompatible pollutants, respectively (Ex. 84–420). Consequently, where these requirements continue to be met, effluent quality will not be altered as a result of this rulemaking.

Solid Waste Disposal

In determining potential effects of the proposal on solid waste, it is necessary to present a brief overview of asbestos waste products and waste sites as potential sources of exposures. Waste dumps have been shown to emit significant numbers of fibers that can still be detected at considerable distances from the source (Ex. 84–421, p. iii). Consequently, waste dumps are major sources of emissions and pose a potentially serious source of nonoccupational exposure.

One concern is that waste materials may be disposed of without regard for their airborne emission potential, and as a result, they may be disposed of in open, municipal waste dumps and treated like non-asbestos waste, creating a long-term source of emissions and exposures to unaware workers and others.

Dumps and waste piles containing asbestos materials are frequently located in densely populated urban areas. Emissions of asbestos fibers can occur when the wastes are transferred to the dump and as the surfaces of the waste piles are eroded by weather conditions. This is particularly true during transfer operations where asbestos materials are dumped, crushed, and spread, causing visible dust emissions. Emissions that occur during the transporting and discharging of asbestos wastes from manufacturing process can be controlled, however, by using enclosures and gas-cleaning devices along transfer points of conveyor systems that move asbestos tailings and by using wetting-agents on the tailings as they are discharged. Once the tailings are dumped, they can be covered with a protective seal or covering to control further emissions.

Asbestos-containing products that have been disposed of in landfills and in dumps usually do not release any significant amount of free asbestos fibers, unless they are crushed or incinerated. Although there are insufficient data to determine how much asbestos is emitted from the incineration of waste products, one study suggests that this incineration could be significant in causing air pollution in the U.S. and that incineration of asbestos products annually emits about 220 tons of free asbestos fiber from all municipal incinerators (Ex. 84–417, p. 289).

Estimates also show that a total of 36,442 short tons of asbestos materials were released to landfills or waste piles from primary and secondary manufacturing processes during 1976. Of this amount, about 7,000 tons could be considered free fibers (Ex. 84–417, p. 289). The largest contributor to solid waste disposal during that period was from the asbestos-cement pipe manufacturing sector, which accounted for a total of 11,897 short tons of asbestos materials. the largest amount of free asbestos fibers resulted from friction materials and accounted for 6,100 short tons.

In addition, the total amount of free-fiber asbestos disposed of from baghouses has been estimated at 9,562 short tons for 1976, and about 75 percent of the free-fiber asbestos disposed of to landfills was collected in baghouses (Ex. 84–417, p. 238).

It does not appear that as a result of the proposal there would be any significant change in these waste disposal practices or in the maintenance of waste disposal sites, since these issues are under the jurisdiction of EPA. EPA's national emission standards (Ex. 84–414) will continue to provide for the control and maintenance of active and inactive disposals as well as require no visible emissions from these sites.

In evaluating the potential impacts of the proposal, the following other factors have been considered.

As already mentioned, under the OSHA proposal, the level of asbestos fibers in the workplace would be lowered either to 0.2 f/cc or 0.5 f/cc. As this reduction occurs, there is a potential for more fibers to be vented outside of that environment, depending on the job performed and control method used. For example, where baghouses and other gas-cleaning devices are used to capture fibers, the 99.9 percent efficiency rate of these devices will remain unchanged. Because these controls are capable of capturing fibers as small as 0.5 microns in diameter and even as small as 0.1 microns (but with less efficiency), more fibers would be captured, potentially benefiting the ambient atmosphere. Consequently, there would be a potential for more accumulation of these fibers in hoppers and their subsequent disposal as solid wastes.

Similarly, in cases where portable capture devices are employed at points of emissions, there would be a potential increase in the amount of fibers captured and subsequently disposed of as solid waste. The degree of environmental impact of these wastes will vary depending on the disposal methods employed.

In fact, OSHA's current standard requires that any abestos wastes that may produce airborne concentrations in excess of the 10 f/cc ceiling limit or the 2.0 f/cc PEL, at any time, must be collected and disposed of in impermeable bags or other closed, impermeable containers, which are properly labeled (29 CFR 1910.0001, g(2)(i); h(2)). Under the proposal, the housekeeping procedures would remain the same. This means that the potential for release of asbestos fibers into the atmosphere will continue to be contained by proper bagging and labeling. To the extent that these wastes continue to be properly bagged and disposed of, there should be no notable change in the level of emissions from these waste materials or in their effect on the external environment.

There are no data to indicate that as a result of the proposal wastes will be handled less efficiently than at present. Rather, as a result of the training provisions of the proposal, worker awareness of asbestos materials and their hazards would be increased, thereby providing a potential for the proper handling and use of these products which, in turn, could be of benefit to the external environment.

The amount of friable asbestos waste and other waste resulting from demolition and renovation operations would probably not change as a result of the proposal, since these are based largely on asbestos construction materials present in already-existing structures. There is a potential, however, for these materials to be reduced or replaced by suitable substitutes in future construction.

Finally, it is conceivable that as a result of the proposal, other materials will be used in place of asbestos in various products, which would result in fewer asbestos fibers being captured, dumped, or recycled. In such instances, fewer asbestos-containing products would be disposed of in landfills, thereby decreasing any potential source of emissions and benfiting the external environment.

Energy and Land Use

Implementation of required engineering controls or certain kinds of respiratory protection to comply with the proposed PELs could result in an increase in total energy requirements, or costs, for primary manufacturers, secondary fabricators, and the automative aftermarket of the asbestos industry. This would be particularly true, of course, where controls are not in place or where the current PEL of 2.0 f/cc is not met. To illustrate, some potential energy costs are briefly described here.

In the general repair sector of the automotive aftermarket, for example, energy costs of shop vacuums have been estimated at $47 per year for 145,985 establishments, excluding actual and maintenance costs (Ex. 84–422, pp. VI–49; VI–54), which does not appear to represent a significant increase in energy use. In primary manufacturing, total energy costs for makeupair units for local exhaust ventilation air exchange were estimated at $10,984 per year (Ex. 84–422, p. VI–30). For respiratory protection, energy costs associated with operating the air compressors were estimated at $83 per plant for 140 plants, for a total of $11,620 per year (Ex. 84–422, p. VI–57).

In terms of land use, OSHA does not project any significant impact on land use plans, policies, or controls. OSHA does not anticipate any significant impact on the short-term uses of man's environment or upon the maintenance and enhancement of long-term productivity beyond those presented in this environmental statement and in the Preamble to the proposal.

Other Impacts

Implementation of the proposed standard could have other indirect impacts that may affect the external environment. The proposed action could encourage the further use, research, and development of suitable substitutes. Where such substitutes are evaluated as "safe" in terms of health effects, their use would be of obvious benefit to the worker environment. This, in turn, would result in a positive environmental impact because less asbestos would be used and less would be exhausted to ambient air or discharged as wastewater effluent or as solid waste. Substitution for asbestos products, abandonment of operations, or foreign competition may reduce the amount of asbestos discharged into the environment. The magnitude or probability of these impacts, however, is impossible to quantify.

Conclusion

In sum, there is no evidence to indicate that there would be any significant adverse impacts to the external environment as a result of the proposal, but as with other OSHA regulations in the past, there is the potential for some benefit to the environment.

In achieving compliance with the proposal, industry will in some instances need to provide training and either install engineering controls, implement work practices, or provide personal protective equipment. Some of these measures could provide a potential benefit to the environment. In the case of engineering controls, for example, the placement of proper controls and filtering devices may mean that filtered air is vented to baghouses or other capture/retention devices, thereby lessening the potential for the release of airborne emissions.

The training of workers should provide an incentive for the proper use and handling of asbestos and asbestos-containing products. Training also has the potential to impact on the disposal of asbestos products in the environment. In the case of construction, for example, in an effort to reduce exposures in the workplace (i.e., external environment in this case), the proper disposal of these asbestos-containing products could potentially benefit the environment. Similary, work practices that involve the wetting down of these products would reduce airborne concentrations of asbestos. Moreover, the proper cleanup materials and wastes that result from wetting down during removal or repair operations may help to alleviate significant wastewater contamination.

IX. Public Participation and Notice of Public Hearing

Interested persons are invited to submit written data, views and arguments with respect to the revisions to the asbestos standard made by the notice published on November 4, 1983, and the issues raised in this document concerning other possible revisions to the permanent asbestos standard. These comments must be received on or before May 25, 1984 and sent to the Docket Officer, Docket No. H-033C, Occupational Safety & Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-6212, Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised in this document and concerning revisions to the standard, including economic and environmental impacts, will be provided at an informal public hearing scheduled to begin at 10:00 a.m. on June 19, 1984 in the Auditorium, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, DC.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear by May 10, 1984 addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-033C, Room N-3635, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 523-8024.

This notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room S-6212), telephone (202) 523-7895, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed, and;

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of the evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to the OSHA Division of Consumer Affairs. This material must be received by May 25, 1984 and will be available for inspection and copying at the Technical Data Center-Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, less time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time.

Conduct of Hearing

In view of the nature of this rulemaking proceeding, the hearing will be conducted in as expedited a manner as possible consistent with full development of the record and the rights of the parties. The hearing will commerce at 10 a.m. on (the first Tuesday after 60 days after publication) with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers—

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means; and

5. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The proposed standard will be reviewed in light of all oral and written submissions

received as part of the record, and a revised standard for occupational exposure to asbestos will be issued based upon the entire record as a whole.

X. Authority and Signature

This document was prepared under the direction of R. Leonard Vance, Director, Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Pursuant to Sections 6(b), 6(c), 8(c) and 8(g) of the Act, 29 CFR Part 1910 is proposed to be amended as set forth below.

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Asbestos, Health.

(Secs. 6(b), 6(c), 8(c) and 8(g). Pub. L. 91–596, 84 Stat. 1593, 1596, 1599, 1600; 29 U.S.C. 655, 657; Sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); 29 CFR Part 1911; Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 4th day of April, 1984

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

XI. Regulatory Text

29 CFR 1910.1001 is proposed to be amended by adding paragraphs (b)(4), (l), and (m) and revising Table 1 of paragraph (k) to read as follows:

§ 1910.1001 Asbestos

* * * * *

(b) *Additional exposure protection.*

* * *

(4) Notwithstanding any other requirements of this section, employers shall ensure that employee exposure to asbestos does not exceed [two-tenths (0.2) fibers or one half (0.5) fibers], 5 micrometers or longer, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section, using any feasible combination of engineering controls, work practices, and personal protective equipment and devices. Where respirators are used to achieve the limit of [0.2 f/cc or 0.5 f/cc], they shall be selected according to Table 1.

* * * * *

(k) * * *

TABLE 1.—Respiratory Protection for Airborne Concentrations of Asbestos

Airborne concentration of asbestos (TWA)	Required respirators
Not in excess of (2 or 5) f/cc (10 × PEL).	Reusable or single use air purifying respirator.
Not in excess of (20 or 50) f/cc (100 × PEL).	Full facepiece air purifying respirator, or a powered air purifying respirator.
Greater than (20 or 50) f/cc....	A type "C" continuous flow or pressure demand, supplied air respirator.

[1] Respirators specified for high concentrations may be used at lower concentrations of asbestos.

(l) *Employee information and training.*

(1) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of (0.2 f/cc or 0.5 f/cc) without regard to the use of respirators and shall assure their participation in the program.

(2) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(3) The training program shall be conducted in a manner which the employee is able to understand. The employer shall assure that each such employee is informed of the following:

(i) The health effects associated with asbestos exposure;

(ii) The relationship between asbestos and smoking in producing lung cancer;

(iii) The nature of operations which could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing, and any necessary instruction in the use of these controls;

(iv) The purpose, proper use, fitting instructions and limitations of respirators permitted by the standard;

(v) The purpose for and a description of the medical surveillance program required by this standard;

(vi) Instructions for the handling of spills and emergency and clean-up procedures; and

(vii) A review of all the provisions contained in § 1910.1001.

(4) Access to training materials. (i) The employer shall make readily available, without cost, to all affected employees all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide, upon request, all information and training materials relating to the employee information and training program to the Assistant Secretary and Director.

(m) Warning signs. In addition to the requirement of paragraph (g)(1) of this section legible signs warning of the health hazards of asbestos shall be provided and displayed at each location where airborne concentrations of asbestos fibers may exceed (0.2 f/cc or 0.5 f/cc).

[FR Doc. 84-9377 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2563-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental rulemaking notice proposes to disapprove an alternative emission strategy "bubble" for two coal-fired boilers and three polyvinyl chloride (PVC) resin storage silos at the B.F. Goodrich Plant located in Avon Lake (Lorain County), Ohio. B.F. Goodrich is located in the portion of Lorain County that is designated a secondary nonattainment area for particulates. The purpose of this notice is to discuss EPA's evaluation of the bubble strategy and to solicit public comments on this rulemaking action.

DATE: Comments on this revision to the Ohio SIP and EPA's proposed action must be received by May 10, 1984.

ADDRESSES: Copies of this revision are available at the following addresses:

Ohio Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Written Comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement, entitled "General Principles for Creation, Banking, and Use of Emission Reduction Credits". This statement indicated that it is the policy of EPA to

encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards. This policy statement described emissions trading, set out general principles EPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicates that, until EPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

In accordance with the provisions contained in the proposed Emissions Trading Policy Statement, the State of Ohio, on September 2, 1982, submitted to EPA a revision to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of variance permits for two coal-fired boilers (B006–#4 and B007#3) and three PVC resin storage silos (PO13, PO14, and PO15) located at the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County, Ohio. The State is requesting an alternative emission strategy "bubble" which would involve trading emissions between the boilers and the silos. Specifically, the trade consists of (1) an increase in allowable emissions for Boiler 3# (from 0.17 to 0.24 lbs/MMBTU @ 52.7 MMBTU/hr) and Boiler #4 (from 0.17 to 0.22 lbs/MMBTU @ 105.4 MMBTU/hr, and (2) a decrease in allowable emissions from PVC silos 3–5 (from 8.6 lbs/hr to 0.25 lbs/hr per silo) B.F. Goodrich is located in the portion of Lorain County that is designated a secondary nonattainment area for particulates (40 CFR 81.336).

EPA reviewed the variance permits and determined that the bubble concept was consistent with EPA's proposed Emissions Trading Policy Statement based upon the following criteria: (1) An acceptable reasonable available control technology (RACT) baseline (0.17 lbs/MMBTU for Boilers #3 and 4, and 8.6 lbs/hr per silo for PVC Silos 3–5) was established; (2) Under the bubble, B.F. Goodrich would achieve a greater emission reduction than if it had complied with RACT under applicable current State Rules 10 and 11 [TSP emissions from the coal-fired boilers and resin storage silos are regulated by Rules 10 and 11, respectively, of Chapter 3745–17 of the Ohio Administrative Code (OAC)], and (3) The bubble satisfied the requirements of a Level II analysis under the Emissions Trading Policy.

Therefore, on February 18, 1983 (48 FR 7211) EPA proposed to approve the bubble. Interested parties were given until May 5, 1983, to provide comments on the notice of proposed rulemaking. EPA received comments from the Natural Resources Defense Council, Inc., and the State of New Jersey.

One of the comments shared by both commentors was that EPA's baseline for the PVC silos (an allowable emission limit of 8.6 lbs/hr per silo) does not represent RACT. More specifically, they commented that the process weight rate curve contained in Rule 11, which establishes for this limit, is not representative of RACT for the B.F. Goodrich PVC silos since the pollution control equipment, baghouses, which control actual emissions to as low as 0.05 lb/hr have been in place on the B.F. Goodrich-Lorain silos since 1980.

Based upon these comments EPA has re-evaluated the baseline used for this bubble. According to the Emissions Trading Policy Statement, the baseline in nonattainment areas may be either allowable or actual historical emissions, depending upon which was used in developing the State's TSP attainment demonstration required pursuant to Part D of the Clean Air Act.

No attainment demonstration exists for TSP in Lorain County. For nonattainment areas with no approved attainment demonstration, the Emissions Trading Policy specifies RACT as the baseline, assuming RACT is already defined in the SIP.

As stated above, Rules 10 and 11 regulate TSP emissions from coal-fired boilers and resin storage silos. On September 21, 1982 (47 FR 41584), in its general rulemaking on the Ohio Part D TSP SIP, EPA proposed approval of the generic allowable emission limits contained in these rules as being representative of RACT. Thus, EPA believed these limits were an appropriate RACT baseline for the bubble trade and proposed to approve the bubble.

However, EPA now agrees that, although the general process weight rate curve in Rule 11 appears to represent RACT for a wide range of industrial processes, it does not represent RACT *for the B.F. Goodrich PVC silos.* It is not RACT because baghouses reducing actual emissions to about 0.05 lb/hr have been in place at the B.F. Goodrich-Lorain facilities since 1980. EPA believes that baghouse control technology represents RACT for B.F. Goodrich's PVC silos. Because the bubble baseline for these silos should be based on emission levels associated with baghouse control technology, Ohio's proposed bubble does not contain sufficient emission reductions to offset the 8.8 lbs/hr combined increase in allowable emissions from the two boilers. Consequently, EPA cannot propose approval of this bubble.

NRDC was also concerned that Ohio Rule 3745–17–11, the generic rule which governs sources such as the B.F. Goodrich PVC silos, did not represent RACT. They feel that EPA should have proposed to disapprove the rule as it applied to PVC silos, when EPA took rulemaking action on the proposed Ohio TSP SIP revisions on September 21, 1982. They also feel that the adequacy of the Ohio rule as it applies to other industrial categories must be re-examined in detail prior to final rulemaking on the Ohio TSP SIP.

EPA agrees that it is necessary to reconsider the appropriateness of the limitations established in Rule 3745–17–11 in light of the RACT requirement in section 172 of the Clean Air Act, at least for certain industrial processes, and plans to do so in its future rulemaking action on the Ohio TSP SIP, which will take place in a separate rulemaking notice. For this reason, EPA is not responding further today on this general issue.

The State of New Jersey questioned EPA's assumption in the bubble analysis that the PVC silos and the boilers were reasonably equivalent either in terms of environmental harm generated by regional dust and coal fly ash, or in quality of emissions from the two processes. Because EPA is no longer proceeding towards approval for this bubble, the Agency does not believe that this comment continues to be material. If, however, EPA receives notification that this comment continues to be applicable to today's rulemaking action, it will be addressed in the final rulemaking notice.

Interested parties are invited to submit comments on this proposed disapproval. EPA will consider all comments received within 30 days of publication of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Region V office listed at the beginning of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (See 46 FR 8709). The affected source will remain

subject to the applicable provisions of the current Ohio TSP SIP. Thus, no additional requirements will be imposed upon these sources.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: December 27, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-9518 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Amend Terms and Conditions Section of Standard Form 1103, U.S. Government Bill of Lading—Original

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by adding a provision to the Terms and Conditions section of Standard Form 1103, U.S. Government Bill of Lading—Original (GBL), advising users that interest will be assessed on overcharges made on GBL's. This provision is the result of passage of the Debt Collection Act of 1982 (Pub. L. 97-365) that permits the Government to collect interest on debts owed to the United States. This statement added to the transportation document will serve as a notice to carriers of the Government's intent.

DATE: Written comments must be received by no later than 4 p.m. May 10, 1984.

ADDRESS: Comments should be sent to General Services Administration (BWCP), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits, (202-786-3014).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amended the Federal Claims Collection Act of 1966, 31 U.S.C. 3711 et seq. to provide for the collection of interest on debts owed to the United States. This proposal will revise page 2 of the GBL by adding a statement to the Terms and Conditions section advising users that interest will be assessed on overcharges made on GBL's. GSA has determined that this rule is not a major rule for the purposes of Ekecutive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

Subpart 101-41.49—Illustrations of Forms

1. The authority citation for 41 CFR 101-41 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

§ 101-41.4901-1103 [Amended]

2. Section 101-41.4901-1103, page 2, is amended by adding the following paragraph to the Terms and Conditions section of the GBL:

* * * * *

Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982.

Dated: March 7, 1984.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 84-9541 Filed 4-9-84; 8:45 am]

BILLING CODE 6820-AM-M

41 CFR Part 101-41

Revision of Standard Form 1169, U.S. Government Transportation Request

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) Part 101-41 by adding to the "CONDITIONS" section on the back of the Standard Form (SF) 1169, U.S. Government Transportation Request (GTR) (Original), the following information: (1) To incorporate a reference to the Code of Federal Regulations (CFR) as part of the contract of carriage, (2) to delete the non-discrimination clause reference to "Executive Order 11375" as the amending authority and substitute "as amended," and (3) to add a provision to advise the carrier industry that interest will be assessed on overcharges issued by the Office of Transportation Audits in connection with GTR procured travel. Incorporation of the CFR reference is made to avoid potential legal problems in connection with the use of the GTR. Specific reference to Executive Order 11375 is considered unnecessary because the basic document has been amended many times and the term "as amended" is considered sufficient for legal purposes. The Debt Collection Act of 1982 (Pub. L. 97-365) amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3717) to provide for the collection of interest on debts owed the United States. This proposed revision will incorporate the interest assessment provisions on the GTR.

DATE: Written comments must be received by no later than 4 p.m. May 10, 1984.

ADDRESS: Comments should be sent to General Services Administration (BWCP), 18th and F Streets, NW., Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits, (202-786-3014).

SUPPLEMENTARY INFORMATION: The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This proposal amends the "CONDITIONS" section of the SF 1169

to incorporate by reference those regulations published in 41 CFR Part 101–41.2, and to facilitate the assessment of interest on overcharges.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Government property management, Maritime carriers, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

Subpart 101–41.49—Illustrations of Forms

1. **Authority:** (31 U.S.C. 3711–3719 and 3726 and 40 U.S.C. 486(c)).

2. Section 101–41.4901–1169 is amended to illustrate the revised SF 1169 as follows:

§ 101–41.4901–1169 Standard Form 1169, U.S. Government Transportation Request (Original).

(a) Page 1 of Standard Form 1169.

(b) Page 2 of Standard Form 1169.

Note.—Page 2 of Standard Form 1169 is illustrated in this volume for examination to permit comment. The remaining forms illustrated in 101–41.4901—1169 are filed with the original document and do not appear in this volume.

Dated: March 19, 1984.

William B. Early, Jr.,

Acting Comptroller.

CONDITONS

1. This transportation request incorporates the regulations published in Title 41, Subpart 101–41.2 of the Code of Federal Regulations.

2. The U.S. Government will not be responsible for charges exceeding those applicable to the transportation or accommodations of the type, class, or character authorized in this request. If a service costing more than that authorized is furnished, the difference must not be billed to the Government but be borne by the traveler. If circumstances require a service of a different type or of a lesser value than that authorized, the traveler shall state on the right, over his signature, the actual service furnished and the reason for the change.

3. The issuing official, by his signature on the face hereof, certifies that the requested transportation is for official business.

4. Carriers shall not honor requests showing erasures or alterations not validated by initials of the issuing official.

5. Carrier shall insert date on which travel commenced, if known.

6. The nondiscrimination clause contained in section 202 of Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are Incorporated herein.

7. INTEREST SHALL ACCRUE FROM THE VOUCHER PAYMENT DATE ON OVERCHARGES MADE HEREUNDER AND SHALL BE PAID AT THE SAME RATE PUBLISHED BY THE SECRETARY OF THE TREASURY PURSUANT TO THE DEBT COLLECTION ACT OF 1982.

INSTRUCTIONS

1. Money must not be furnished in exchange for transportation requests nor may transportation requests be passed through banks for collection.

2. Instructions for billing charges on Standard Form 1113, Public Voucher for Transportation charges, are found in GSA's Federal Property Management Regulations 101–41 (41 CFR) which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. SF 1113 may be purchased from the Superintendent of Documents or reproduced in accordance with 41 CFR 101–41.202–5.

3. When charges are payable in foreign funds, designate currency in the block titled "Special Accommodations and Requirements."

4. Travelers must use American-flag carriers as prescribed by 46 U.S.C. 1241 and 49 U.S.C. 1517. Statement by authorizing official or traveler justifying use of foreign-flag carrier must accompany appropriate voucher. Lack of acceptable justification may render traveler financially liable. See General Accounting Office standards in 4 CFR 52.2.

FOR CARRIER USE ONLY
(See condition 4)

DATE TRAVEL COMMENCED

SERVICE REQUIRED, *Continued*

SERVICE FURNISHED, IF OTHER THAN REQUESTED

STANDARD FORM 1169 BACK (REV. 7-83)

[FR Doc. 84-9540 Filed 4-9-84; 8:45 am]
BILLING CODE 6820-AM-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for Certain Introduced Populations of Colorado Squawfish and Woundfin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to introduce Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagoterus argentissimus*) into the Gila River drainage in Arizona and to determine these populations to be "nonessential experimental" populations according to Section 10(j) of the Endangered Species Act of 1973. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened. The Service has much more discretion in divising a managment program for threatened species than for endangered species, especially on matters regarding regulated takings. Accordingly, a special rule to allow take in accordance with State law is proposed for these nonessential experimental populations. In the past, these fishes were more widespread in the State of Arizona where they occurred in several river drainages. This action is being taken in an effort to reestablish populations of Colorado squawfish and woundfin within their historic range.

DATES: Comments from the State of Arizona and the public must be received by May 10, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: For further information on the proposal, contract Mr. Conrad Fjetland, Assistant Regional Director, U.S. Fish and Wildlife Service, Albuguerque, New Mexico 87103 (505/766-2321 or FTS 474-2321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, became law on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new Section 10(j) which established procedures for the designation of

specific populations of listed species as "experimental populations." Regulations implementing the experimental population designation were proposed on January 9, 1984 (49 FR 1166–1169). This proposal will not be finalized until the general regulations have been implemented. Under authorities in the Endangered Species Act (ESA) previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to translocation effort, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under Sections 7 and 9 of the Act. Under Section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Services has much more discretion in devising management programs for threatened species than for endangered species, especally on matters regarding regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would not be afforded protection under Section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities which are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate Section 7(a)(2) of the ESA and complies with the permit requirements in Section 10 (a)(1)(A) and (d). The two species of fishes included in this proposal are Colorado squawfish (*Ptychochoilus lucius*) and woundfin (*Plagopterus argentissimus*), both of which are currently listed as endangered.

Colorado squawfish were once widespread, occupying the entire Colorado River system including the Gila River system in Arizona. Squawfish were also present in tributaries of the Gila River, including the Salt, Verde, and San Pedro Rivers and likely several others. The last specimen known from Arizona waters was collected in the early 1950's and extensive sampling subsequent to that date has failed to locate specimens anywhere within the State of Arizona. The reason for the decline of the Colorado squawfish is dewatering, dams, and competition with exotic species of fish. However, good habitat remains in the stream areas proposed for the reintroduction of the Colorado squawfish and there is a good likelihood that it will become established in these areas. Establishment of experimental populations of Colorado squawfish will make a significant contribution to the recovery of the species. The Colorado Squawfish Recovery Plan calls for reintroduction of the species into selected streams in the lower basin where the species formerly occurred. The stock of Colorado squawfish to be reintroduced will come from an existing captive-bred population and will not result in the removal of any individuals from the wild population.

Woundfin were distributed in the mainstream Colorado, Gila, Salt, and Virgin Rivers. Dams and dewatering have made most of these habitats unsuitable, while exotic species, especially red shiners (*Notropis lutrensis*), have outcompeted woundfin in the few remaining flowing streams. Only the Virgin River continues to maintain a woundfin population. The Service proposes to remove 5,000 individuals from the extant population to stock the experimental populations. The removal of these individuals is not likely to jeopardize the continued existence of the woundfin. The Woundfin Recovery Plan calls for reintroduction of woundfin into central Arizona streams where this species formerly occurred. The stream areas proposed for reintroduction of the woundfin contain good habitat for this species, and the likelihood that these experimental populations will become established is good. If these experimental populations are successful they will make a significant contribution to the recovery of the woundfin. The release of these experimental populations as proposed will further the conservation of the species.

Status of Reintroduced Populations

The reintroduced populations of Colorado squawfish and woundfin are proposed as "nonessential" experimental populations according to the provisions of the 1982 Amendments to the Endangered Species Act. Nonessential experimental population status for the introduced Colorado squawfish and woundfin means that they would be subject only to provisions of Sections 7(a) (1) and (4) of the Endangered Species Act which authorize Federal agencies to establish programs furthering their conservation and which require Federal agencies to informally confer with the Secretary regarding actions which are likely to jeopardize the continued existence of the species. The restrictions on Federal agency activity in Section 7(a)(2) would not apply. Justification for the "nonessential" status for the proposed introduced experimental populations of Colorado squawfish and woundfin is as follows:

1. *Colorado squawfish.* Populations of this species are still viable in portions of the Green, Colorado, and Yampa Rivers in the upper basin. In addition, sufficient brood stock is available at Dexter NFH to produce many fry. Techniques for propagating and rearing this species have been developed and are in place. Reintroduction is a recovery action designed to increase the number of populations, rather than to prevent their further decline. The loss of these captive-reared specimens would not reduce the likelihood of the survival of Colorado squawfish in the wild.

2. *Woundfin.* The population in the Virgin River is relatively stable and the habitat is moderately secure. Fish numbers vary with amounts of spring flows and irrigation practices that dewater portions of the stream, but the recovery team sees no near-future significant alternation for the Virgin River habitat. Woundfin are being held at Dexter National Fish Hatchery (NFH), but spawning attempts have been only marginally successful. The removal of woundfin from the extent population is not expected to negatively affect the stability of that population. Therefore, the loss of the reintroduced populations would not reduce the likelihood of the survival of the woundfin in the wild.

This reintroduction is an action to increase the numbers of populations of woundfin rather than an attempt to prevent their further decline.

Location of Reintroduced Populations

All of the sites proposed for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an upstream distance of at least 800 miles, 6 mainstream dams and 200 miles of dry riverbed from the proposed release site.

Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams from the proposed release site). All proposed reintroduction sites are within the historic range of these species.

Colorado Squawfish

1. *Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S. Highway 60 bridge.

2. *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville. The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabited by Colorado squawfish. Downstream movement of squawfish in these areas will be restricted by dams and upstream movement is limited by habitat.

Woundfin

1. *Arizona:* Gila and Yavapai Counties. Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

2. *Arizona:* Graham and Greenlee Counties. Gila River from backwaters of San Carlos Reservoir upstream to the Arizona/New Mexico State line.

3. *Arizona:* Greenlee County. San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

4. *Arizona:* Gila County. Tonto Creek, from Punkin Center upstream to Gisela.

5. *Arizona:* Yavapai County. Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of suitable habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

Management

The Service and the Arizona Game and Fish Department plan to initiate reintroduction as soon as possible. Present plans call for annual stocking for the next 10 years. The first stocking of Colorado squawfish could consist of as many as 100,000 individuals. These could be distributed in approximately equal numbers between the 2 sites identified above. All of the fish will come from the hatchery stock which was spawned and reared in the Dexter National Fish Hatchery in Dexter, New Mexico. Future Colorado squawfish stock will also come from the hatchery. The first stocking of woundfin will consist of approximately 5,000 individuals. The woundfin will be taken from the only extant population which inhabits the Virgin River in Arizona and Utah. The 5,000 woundfin will be distributed among the 5 areas identified above based on the available habitat in each area. Present plans call for the production of woundfin in the Dexter National Fish Hatchery to provide future stock for reintroduction.

The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproductive success, and general health condition of the fish. These proposed experimental populations of squawfish and woundfin will be treated as threatened species under all provisions of the Act other than Section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to these populations, except that individual fishes of these populations may be taken in accordance with applicable State law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). Portions of the rivers selected for reintroduction occur near small towns in Arizona, but the majority of the reaches are far removed from inhabited areas. All of the water is allocated under Western Water Law, but many of the senior water rights are downstream from the areas of reintroduction. Salt River Project, a private water district supplying water to metropolitan Phoenix, owns most of the water rights. United States Forest Service owns most of the watershed, along with the San Carlos and White Mountain Apache Indian Tribes. Phelps Dodge and Mining Company owns significant water rights on the Gila and San Francisco Rivers. None of these private or State entities will be affected by the action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Authors

The principal authors of this proposal are James Williams and Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2760).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order (following the existing entry) to the List of Endangered and Threatened Fish:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
* * *		* * *	* * *	* * *	* * *		
Squawfish, Colorado	*Ptychocheilus lucius*			XN			17.84(a)
* * *		* * *	* * *	* * *	* * *		
Woundfin	*Plagopterus argentissimus*			XN			17.84(a)
* * *		* * *	* * *	* * *	* * *		

3. It is proposed that Title 50 CFR Part 17 be amended by adding a new § 17.84 as follows:

§ 17.84 Special rules—vertebrates.

(a) Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagopterus argentissimus*).

(1) The Colorado squawfish and woundfin populations identified in paragraph (4) below are experimental, nonessential populations.

(2) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For education purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (2).

(6) All of the sites for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado rivers, an upstream distance of at least 800 miles including 6 mainstream dams, and 200 miles of dry riverbed. Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams). All reintroduction sites are within the historic range of these species and are as follows:

(i) *Colorado Squawfish—Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S. Highway 60 bridge.

(ii) *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville. The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabitated by Colorado squawfish. Downstream movement of squawfish in these areas will be by dams and upstream movement is limited by habitat.

(i) *Woundfin—Arizona: Gila and Yavapai Counties.* Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

(ii) *Arizona: Graham and Greenlee Counties.* Gila River from backwaters of San Carlos Reservoir upstream to Arizona/New Mexico State line.

(iii) *Arizona: Greenlee County.* San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

(iv) *Arizona: Gila County.* Tonto Creek, from Punkin Center upstream to Gisela.

(v) *Arizona: Yavapai County.* Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

(5) The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproduction success, and general health condition of the fish.

(b) [Reserved]

Dated: January 16, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9544 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-07-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitats for Seven Plants and One Insect in Ash Meadows, Nevada, and of Public Hearing on the Proposal To Establish the Ash Meadows National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing and comment period.

SUMMARY: Notice is given that a public hearing will be held and the comment period reopened on a proposal of endangered status for seven plant and one insect species in Ash Meadows, Nevada. At the same time, a hearing will be held on the proposal to establish the Ash Meadows National Wildlife Refuge. This hearing and comment period are to allow acceptance of comments from interested parties.

DATES: The combined public hearing will be held at the Amargosa Community Center, Star Route 15, Amargosa, Nevada, at 7:00 p.m. on April 24, 1984. The comment period opens effective with the publication of this notice and closes on April 25, 1984.

ADDRESSES: The Amargosa Community Center is on Star Route 15 in Amargosa, Nye County, Nevada. Comments should be addressed to the Regional Director U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Steeet, Portland, Oregon 97232 (503/231-6131), or Mr. John L. Spinks, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

On October 13, 1983, the Service published a proposal in the **Federal Register** (48 FR 46590-46598) to list seven plant and one insect species in

Ash Meadows as endangered and to determine their critical habitats. On December 9, 1983, Mr. Stephen T. Bradhurst, Nye County Planning Consultant, requested a public hearing on that proposal. This public hearing will be held at the Amargosa Community Center, Amargosa, Nevada, at 7:00 p.m. on April 24, 1984. This will be a combined hearing on these proposed listings and on the proposal to establish the Ash Meadows National Wildlife Refuge. The comment period on both proposals closes on April 25, 1984.

The primary author of this notice is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wilflife Service, Washington, D.C. 20240 (703/235-1975).

List of Subjects in 50 CFR Part 17

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

Note.—Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitats for Seven Plants and One Insect in Ash Meadows, Nevada, and of Public Hearing on the Proposal to Establish the Ash Meadows National Wildlife Refuge.

Dated: April 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9664 Filed 4-6-84; 2:36 pm]

BILLING CODE 4310-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 40309-26]

American Lobster Fishery

Correction

In FR Doc. 84-6852 beginning on page 9589 in the issue of Wednesday, March 14, 1984, make the following correction.

On page 9590, first column, second paragraph fifth line, "§ 639.20(f)" should read "§ 649.20(f)".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Renewal

Notice is hereby given that the Secretary of Agriculture has renewed the National Advisory Committee on Tobacco Inspection Services for an additional period of two years.

This Committee advises the Secretary of the level of services needed and the establishment of fees and charges to recover the cost of such services.

Membership of the Committee consists of 14 producers of tobacco representing all production areas.

The Committee shall meet at the call of the Secretary.

Authority for this Committee is Section 5 of the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

This notice is given in compliance with Pub. L. 92–463.

Dated: April 3, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–9491 Filed 4–9–84; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Friday, May 25, 1984 at 1:00 P.M. at the San Juan National Forest Office, Conference Room, 701 Camino del Rio, Durango, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of the implementation of the San Juan National Forest Land and Resource Plan and the effects on the utilization of range betterment funds; and (4) discussion concerning the availability of vacant sheep allotments.

The meeting will be open to the public. Persons who wish to attend and participate should notify David W. Cook, San Juan National Forest (303–247–4874) prior to the meeting. The public may participate in discussion s during the meeting or may file a written statement following the meeting.

John R. Kirkpatrick,

Forest Supervisor.

March 29, 1984.

[FR Doc. 84–9602 Filed 4–9–84; 8:45 am]

BILLING CODE 3410–11–M

Montana Department of State Lands; Stillwater Mining Co.; Platinum/Palladium Mine Development; Stillwater County, Montana; Intent To Revise an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, and Montana Environmental Policy Act of 1971, the Forest Service Department of Agriculture, and Montana Department of State Lands, will revise a joint environmental impact statement for the development of a proposed platinum/palladium mine on the Beartooth Ranger District and adjoining private lands. The draft environmental impact statement to be revised was published in June 1982 in response to a proposal by the Anaconda Minerals Company for a mine at the same site. Anaconda Minerals Company has since entered into a partnership with two other companies to form the Stillwater Mining Company. Stillwater Mining Company submitted a revised application in March 1984.

A range of alternatives for placement of facilities other than the mine site will be considered. Impacts and mitigation measures will be discussed. Lands in the area are open to mineral entry, and denial of the permit will not be considered if other State and Federal legal requirements are met.

A public meeting will be held at the High School in Absarokee, Montana, on April 23, 1984, to discuss the proposed operation and solicit comments from the public on the validity of the issues identified for the original environmental impact statement.

James F. Mann, Forest Supervisor, Custer National Forest, is the responsible Federal official. Dennis Hemmer, Commissioner of State Lands, is the responsible State official. Questions about the proposed action and environmental impact statement should be directed to John Inman, Resource Coordinator, in the Custer Forest Supervisor's Office (phone 406–657–6361), or Kit Walther, Montana Department of State Lands (phone 406–444–2711).

The revisions are expected to take about six months. The revised draft environmental impact statement should be available for public review by September 1984. The final environmental impact statement is scheduled to be completed in January 1985.

Written comments and suggestions concerning this revision should be sent to James F. Mann, Forest Supervisor, Custer National Forest, Billings, Montana 59103, or Dennis Hemmer, Montana Department of State Lands, Capitol Station, Helena, Montana 59620, by May 7, 1984.

James F. Mann,

Forest Supervisor.

March 30, 1984.

[FR Doc. 84–9603 Filed 4–9–84; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 13–84]

Foreign-Trade Zone 23—Erie County, New York; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of Foreign-Trade Zones 23, requesting authority to expand its general-purpose foreign-trade zone in Erie County, New York, to include seven sites in Grand Island, New York, adjacent to the Buffalo-Niagara Falls Customs port of entry. The application 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). It was formally filed on March 28, 1984. The applicant is authorized to

make this proposal under Chapter 201 of the Laws of New York.

On March 31, 1976, the County received authority from the Board to establish a foreign-trade zone in the Buffalo area (Board Order 110, 41 FR 14824, 4/7/76). The zone has been expanded twice (Board Order 148, 44 FR 65802, 12/7/79 and Board Order 187, 47 FR 18014, 4/27/82), and currently includes 4 sites in the Buffalo area.

This expansion of Foreign-Trade Zone 23 will involve seven parcels totalling 282 acres in or near the Grand Island Research and Development Industrial Park off the New York State Thruway in Grand Island, near the Canadian border. Four of the parcels are owned by Ilona Lang/Tri-Lan Park, Inc., two by Sevenson Construction, and one by the Grand Island Central School Disctict. Although all the parcels are vacant, several have been prepared for industrial construction. The zone would be primarily for individual users requiring separate facilities. The Town of Grand Island will administer the project.

In accordance with 15 CFR Part 400, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. De Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Robert R. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

As part of its investigation the examiners committee will hold a public hearing on May 8, 1984, beginning at 9:00 a.m., in the Town Meeting Room, Grand Island Town Hall, 2255 Baseline Rd., Grand Island, New York.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary by May 1. Instead of an oral presentation, written comments may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through June 11, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 111 W Huron Street, Buffalo, N.Y. 14202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, N.W., Washington, D.C. 20230.

Dated: April 5, 1984.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-9601 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 6-84]

Foreign-Trade Zone 53, Rogers County, Oklahoma; Application for Subzone at Steel Tube Plant of Tubular Corporation in Muskogee, Oklahoma; Extension of Record

The period for comments on the above case involving special-purpose subzone status for the steel tube manufacturing plant of Tubular Corporation of America in Muskogee, Oklahoma (49 FR 9245, 3/12/84) is extended to May 11, 1984, to allow interested parties to review additional material which has been submitted by the applicant concerning the benefits of zone procedures in this proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available for public inspection at the same locations where the application and record has been available:

Port Directors Office, U.S. Customs Service, Tulsa International Airport, Tulsa, Oklahoma 74115.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Dept. of Commerce, 14th & Pennsylvania Ave., N.W., Rm 1872, Washington, D.C. 20230.

Dated: April 5, 1984.

John J. Da Ponte, Jr.,

Exceutive Secretary.

[FR Doc. 84-9600 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-108. Applicant: University of Florida, Institute of Food & Agricultural Sciences, 2039 McCarty Hall, Gainesville, FL 32611. Instrument: Automatic Recording Spectropolarimeter, Model J-500 C with Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Studies of biopolymers including glycoproteins, enzymes, polysaccharides, peptide hormones and lipoproteins. Experiments will be conducted to obtain circular dichroism spectra of high quality (in the region of 185 to 1,000 nm wavelength light) of solutions of the biopolymers at varying temperatures and concentrations. Application received by Commissioner of Customs: February 23, 1984.

Docket No.: 84-137. Applicant: North Carolina State University, Purchases and Stores Division, Box 7212, Raleigh, NC 27695-7212. Instrument: LaB_6 Electron Gun Conversion Kit and Parts. Manufacturer: Hitachi, Japan. Intended use: The instrument is an accessory to an existing Scanning Transmission Electron Microscope which is being used routinely for research on the microstructure of defects and interfaces in metals, ceramics and electronic materials and for the analyses of composition and morphology of powders. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84-138. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Instrument: Excimer Laser/Excimer-Pumped Dye Laser, Model EMG 203/FL 2002. Manufacturer: Lambda Physik, West Germany. Intended use: As a source of intense tunable laser radiation for laser-induced fluorescence measurements in combustion gases (e.g., NO, OH, CN). The objective of the experiments is to establish new techniques for quantitatively measuring species concentrations and temperature in various combustion flows, with emphasis on techniques enabling high repetition rate measurements at multiple points in the flows. Such measurements effectively provide "images" of flow properties. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84-140. Applicant: Armed Forces Radiobiology Research Institute, NMC-NCR, Building 42, Bethesda, MD 20814. Instrument: Fluorescence Lifetime

Instrumentation. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Studies of fluorescence lifetime quantum yields and fluorescence depolarization of chemical solutions as well as lipids and membranes or proteins. Time dependence fluorescence measurements of fluorescent labeled drugs and radioprotectant agents interacting with DNA will be performed. In addition, the rotational motion of specifically labeled lymphocyte memberane antigens will be probed. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–141. Applicant: National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Instrument: Tandem Double-Focusing Mass Spectrometer and Data System. Manufacturer: VG Analytical, United Kingdom. Intended use: Study of a wide variety of environmental and biological molecules which may occur in a complex matrix of other compunds. Typical examples include polypeptides, metabolites of environmental compounds and their conjugates, polynucleotides (both native and modified) and neurotransmitters. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–142. Applicant: Oregon Granduate Center, 19600 N.W. Walker Road, Beaverton, OR 97006. Instrument: Mass Spectrometer, Model 7070 EHF with Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: Mass analyses, gas chromatographic/mass analyses, and ion yield measurements of synthetic organic, bio-organic, bio-inorganic and biomedical molecules. The objectives of these experiments are characterization or confirmation of structures of synthetic intermediates and products, identification and/or quantitation of natural products of biological systems, identification and/or quantitation of organic species in the environment, elucidation of molecular mechanisms in biological processes, and elucidation of ionization and volatilization mechanisms which must necessarily precede mass analyses of organic compounds. Educational purposes—To teach the operating principles of mass spectrometers, to develop knowledge of the applications of mass spectrometry, to teach practical techniques (including instrument operation) associated with the applications of mass spectrometry, and to use the available instrumentation and associated mass spectrometric techniques in the conduct of original research. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–144. Applicant: University of California, Davis, Facility for Advanced Instrumentation, 9-Hutchison Hall, Davis, CA 95616. Instrument: GC/Mass Spectrometer with Data System, Model ZAB–2F–HS/11–250. Manufacturer: V.G. Instruments, Inc., United Kingdom. Intended use: Continuing research that includes but is not limited to the following: (1) Study of steroid metabolizing enzymes both for their intrinsic interest and as model systems for intra and extracellular steroid binding proteins. (2) Relative effects of mono-and disaccharides (glucose, fructose, galactose, lactose, maltose and sucrose) on lipid synthesis and secretion by hepatocytes in primary monolayer culture. (3) Metabolism of plant natural products. (4) Mammalian metabolism of epoxidized xenobiotics and action of these epoxides leading to mutagenicity and carcinogenicity; immunochemical methods for the analysis of xenobiotics in the environment, development of selective insect control agents based upon the endocrine systems; and comparative pesticide metabolism. (5) Study of the comparative toxicology of carcinogenic mycotoxins. (6) Mechanism of action of flavin enzymes, in particular, the enzymes involved in hydroxylation and bioluminescence. (7) Isolation and characterization of crosslinking amino acids in collagen, elasting and related proteins. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–145. Applicant: NCI-Frederick Cancer Research Facility, P.O. Box B, Frederick, MD 21701. Instrument: Electron Microscope, Model EM 410LS, with Accessories. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use: Studies of isolated cells and tissues from experimental animals or obtained by tissue culture techniques. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–146. Applicant: National Insitutes of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Instrument: Quadrupole Mass Spectrometer System, Model 12–250. Manufacturer: VG Analytical, United Kingdom. Intended use: Characterization of individual components of complex samples of biological or environmental origin, analyze low to middle molecule weight (1–1,200 daltons) biological samples. Research will include the uptake, distribution, modification and excretion of manmade chemicals by biological systems and the study of any adverse response associated with this chemical exposure. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–107. Applicant: Trustees of the University of Pennsylvania, Purchasing Department, 3451 Walnut Street/I6, Philadelphia, PA 19104. Instrument: Sample Exchange System (Manipulator). Manufacturer: High Voltage Engineering, The Netherlands. Intended use: Research in the area of the basics of semiconductor surface physics (clean semiconductor surfaces and metal-semiconductor interfaces). Fundamental studies of clean metal surfaces (reconstructed metal surfaces and vibrational amplitudes). Studies of adsorbed and segregated atoms on metal—implications for chemical reactivity. Application received by Commissioner of Customs: February 29, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–9523 Filed 4–9–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–010]

Carbon Steel Wire Rod From Brazil; Early Determination of Antidumping Duty

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of early determination of antidumping duty.

SUMMARY: The Department of Commerce has conducted an early determination of the antidumping duty to be assessed upon imports of carbon steel wire rod manufactured by Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara and entered, or withdrawn from warehouse, for consumption from May 4, 1983 through November 7, 1983. The determination will also be the basis for the cash deposit of estimated antidumping duties on future entries of such merchandise from Brazil.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Hampel or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2923/1130.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52110) an antidumping duty order on carbon steel wire rod from Brazil. In accordance with the order, the Department directed Customs officers to require a cash deposit of estimated antidumping duties on entries of the merchandise pending liquidation.

On November 10, 1983, Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara ("COSIGUA") requested that the Department waive the cash deposit requirement and make an early determination of antidumping duty. On December 19, 1983, we announced in the **Federal Register** (48 FR 56098) that, in accordance with section 736(c) of the Tariff Act of 1930 ("the Tariff Act"), we would determine the foreign market values and United States prices for shipments of Brazilian carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered from the date of our preliminary affirmative determination of sales at less than fair value to the date of final affirmative injury determination by the International Trade Commission ("ITC"). We waived the cash deposit of estimated antidumping duties pending the early determination of duty. Effective February 14, 1984, the waiver was terminated. We have now completed the section 736(c) determination.

Scope of the Determination

Imports covered by the determination are shipments of carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA. Carbon steel wire rod is a coiled, semi-finished, hot-rolled, carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Carbon steel wire rod is currently classifiable under item 607.17 of the Tariff Schedules of the United States.

We examined all imports of carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered, or withdrawn from warehouse, for consumption during the period May 4, 1983 through November 7, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. packed price to an unrelated purchaser in the United States. We made deductions for foreign inland freight and port charges. To account for taxes imposed in Brazil but not collected on export, as required by section 772(d)(1)(C) of the Tariff Act, we have made the adjustment by subtraction from home market price. For COSIGUA, we made an additional deduction for a commission paid to an unrelated Brazilian selling agent. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the home market price, in accordance with section 773 of the Tariff Act. For Belgo-Mineira, our determination of similar merchandise under section 771(16) of the Tariff Act was based upon a comparison of grade and rod diameters.

Home market price was based on the weighted-average delivered, packed price to customers who purchased during the 15 days prior and subsequent to the date of sale to the U.S. purchaser. We made deductions, where applicable, for inland freight and early payment discounts actually received by purchasers. We also adjusted for differences in credit terms. For COSIGUA, we deducted an amount for indirect selling expenses up to the amount of the commission paid on the sale to the U.S. purchaser. For Belgo-Mineira, we also adjusted for differences in packing costs. No other adjustments were claimed or allowed.

Analysis of Comments Received

We gave interested parties an opportunity to request disclosure and to submit written comments or request a hearing on the disclosed results. At the request of the petitioners, five United States wire rod producers, the Department held a public hearing on February 6, 1984.

Comment 1. The petitioners argue that this review, which is the basis for establishing estimated cash deposits on future entries, is not warranted because it covers home market sales data for only one month, an insufficient number of sales to the United States, and because the reductions in the dumping margins found for this period are principally attributable to a temporary decline in the U.S. dollar value of respondents' home market prices caused by the February, 1983, maxi-devaluation, rather than to price revisions by the respondents.

Department's Position. At the time the respondents requested this review under section 736(c) of the Tariff Act, they submitted information that we considered sufficient to determine the foreign market value and United States price of their shipments of wire rod to the United States entered on or after the date of publication of the preliminary determination of sales at less than fair value and before the date of publication of the ITC's final affirmative injury determination. During that period, each respondent concluded a single transaction. We found that each transaction was of commercial quantity and that landed values were comparable to shipments from other wire rod producing countries. We are satisfied that these shipments form a sufficient basis to warrant this review.

The review examines home market sales data covering 15 days before and after each sale to the United States because we based foreign market value on home market selling prices as of the date of purchase of the merchandise sold to the United States. Because both U.S. sales occurred at the end of August, our consideration of home market sales data was limited to a single 30 day period.

During the period of this review, both the February, 1983, maxi-devaluation of the cruzeiro and the respondents' change in pricing policies (i.e., controlled increases in home market prices at rates less than the rate of inflation in the home market) contributed to significant reductions in margins from those found during the fair value investigation.

Comment 2. The petitioners contend that the Department should consider only those home market sales that occurred within 15 days prior to or subsequent to the date of sale to the United States as appropriate for the basis of foreign market value. This approach is required because Brazilian home market prices are constantly adjusted upward to reflect the high rate of inflation in Brazil, and because this bracketing method was adopted in the final determination of sales at less than fair value and departure from it in this review would be arbitrary.

Department's Position. We agree that, in this case, we should consider home market transactions bracketing the sale to the United States, because of the dramatic inflation rate in Brazil and the respondents' practice of revising home market prices upward approximately twice each month. For each manufacturer, we have applied the methodology used during the fair value investigation, and have determined foreign market value on the basis of the weighted-average of home market selling prices during the 15 days preceding and the 15 days following the date of sale to the U.S.

Comment 3. The respondents argue that a bracketing approach that considers home market sales occurring before and after a sale to the United States is inconsistent with a determination of foreign market value under section 773 of the Tariff Act, which provides for ascertainment of foreign market value as of the date of purchase of the merchandise sold to the United States.

Department's Position. In this review, we found no sale of comparable merchandise in the home market made by either respondent on the same date as the sales to the United States. For the reasons stated in our position to *Comment 2,* we determined that a weighted-average of home market selling prices during a period bracketing the date of the sale to the U.S. was the most appropriate basis for ascertaining foreign market value as of that date.

Comment 4. The repondents argue that an adjustment to foreign market value for differences in credit terms is appropriate, and that the value of the home market credit terms should be quantified as equivalent to the amount of discount each manufacturer grants to purchasers who pay upon delivery rather than at the expiration of the delayed payment term. Respondents argue that such an approach is appropriate because it reflects the market value of the credit terms, and is the method used during the fair value investigation.

Department's Position. We agree that a circumstance of sale adjustment to foreign market value is appropriate for differences in credit terms. However, we do not agree that an early payment discount constitutes an appropriate basis for an adjustment for differences in credit terms because it does not necessarily reflect the market value or the manufacturer's costs of extending credit. Rather, such a discount is a distinct circumstance of sale for which an adjustment to foreign market value may be appropriate where differences exist between the two markets. During the fair value investigation, the manufacturers' early payment discount yielded the same result as the Banco do Brasil's rate for discounting accounts receivable, a rate that we have considered to be a benchmark of the cost of short-term financing in Brazil. During the period of this review, however, the manufacturers' early payment discount rates increased and the Banco do Brasil's discount rate on receivables fell. Therefore, we have relied upon the Banco do Brasil rate as indicative of the cost to the seller of extending credit to purchasers in the home market. As noted above, we also took account of early payment discounts where appropriate.

Comment 5. Respondents argue that if the Department quantifies an adjustment for the differences in credit terms on the basis of the Banco do Brasil's rate for discounting accounts receivable, that rate must be compounded to arrive at an effective annual interest rate and then applied to the sales price for the period during which credit was extended.

Department's Position. We disagree. In our *Preliminary Affirmative Countervailing Duty Determinations on Certain Carbon Steel Products from Brazil* (49 FR 5157, February 10, 1984), we calculated an effective annual interest rate based upon the Banco do Brasil's nominal discount rates in order to quantify the benefit from a preferential financing program that provided loans with terms of up to one year. No such comparison to other forms of financing is necessary here. Where a manufacturer makes a sale in the home market with delayed payment terms, it may immediately negotiate that receivable for an amount less than its face value. The receivable is discounted at the nominal rate in effect. Therefore, the nominal Banco do Brasil discount rate is indicative of the seller's cost of extending credit.

We recognize that a company may rely upon a variety of sources to obtain working capital. For purposes of determining the costs to a seller of extending credit to its purchasers, we intend to examine individual manufacturer's sources of alternative short-term financing, and, to the extent possible, rely upon the particular manufacturer's short-term financing experience in ascertaining credit costs in the course of future administrative reviews of this order.

Comment 6. COSIGUA claims that a mathematical error in the calculation of indirect selling expenses in the home market improperly reduced the offset for the commission paid on the sale to the United States, thereby increasing foreign market value.

Department's Position. We agree. We recalculated the indirect selling expenses incurred by COSIGUA and found that they exceed the amount of commission paid on the U.S. sale. Therefore, we have corrected the results disclosed to COSIGUA and have allowed an offset to foreign market value for indirect selling expenses up to the amount of the commission paid on the sale to the United States.

Early Determination

As a result of our comparison of United States price to foreign market value, we determine that the weighted-average margins for Brazilian carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered during the period May 4, 1983 through November 7, 1983 are as follows:

Manufacturer	Percent
Belgo-Mineira	0.00
COSIGUA	7.43

The Department shall determine, and the Customs Service shall assess, antidumping duties on shipments of Brazilian carbon steel wire rod manufactured by COSIGUA and entered, or withdrawn from warehouse, for consumption on or after May 4, 1983 and before November 7, 1983. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 353.48 of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of carbon steel wire rod from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For future entries from a new exporter not covered in this review, whose first shipments occurred after November 7, 1983, and who is unrelated to a covered firm, a cash deposit of 7.43 percent shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of November 1985.

This early determination and notice are published pursuant to section 736(c) of the Tariff Act (19 U.S.C. 1673e(c)) and § 353.49 of the Commerce Regulations (19 CFR 353.49).

Dated: March 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9547 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Harvard University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651,

80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 84-8. Applicant: Harvard University, Boston, MA 02115. Instrument: 170 Small Mammal Traps (Longworth Type). Manufacturer: Penlon Ltd., United Kingdom. Intended Use: See notice at 48 FR 57581.

Comments: None received.

Decision: Approved. No apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign apparatus protects trapped animals from rain or cold, provides bedding and may be baited using oats. The National Institutes of Health advises in its memorandum dated February 9, 1984 that : (1) The capability of the foreign apparatus described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic device or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

We know of no other device or apparatus of equivalent scientific value to the foreign article which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-9524 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Railway Track Maintenance Equipment from Austria; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On February 14, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on railway track maintenance equipment from Austria. The review covers the one known exporter of this merchandise to the United States and the period February 1, 1982 through January 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or John R. Kugelman, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 5644) the preliminary results of its administrative review of the antidumping finding on railway track maintenance equipment from Austria (43 FR 6937, February 17, 1978). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of ballast regulators and tamping machines, two specific types of railway track maintenance equipment. Other types of machinery used in the maintenance of railway track are excluded from this finding. All railway track maintenance equipment is currently classifiable under item 690.2000 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Austrian railway track maintenance equipment to the United States, Plasser and Theurer GmbH, and the period February 1, 1982 through January 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review.

Further, because there were no margins on the last shipments by Plasser and Theurer, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of Austrian railway track maintenance equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9546 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

The University of Iowa Hospital & Clinics; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84-22. Applicant: The University of Iowa Hospitals & Clinics, Iowa City, IA 52242. Instrument: Installation Kit Components for use in Osseointegration. Manufacturer: AB Bofors Nobelpharma, Sweden. Intended Use: See notice at 49 FR 922.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is necessary to the intended research on jawbone-anchored bridgework based upon the principle of Osseointegration. The National Institutes of Health advises in its memorandum dated February 9, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-9525 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on this application must be submitted on or before April 30, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00013."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards For Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Equinomics, Inc., 4994 Baccich Street, New Orleans, Louisiana 70122

Application No.: 84-00013

Date Deemed Submitted: March 26, 1984

Members in Addition to Applicant: None

Summary of the Application

Equinomics, Inc., a Louisiana corporation, has submitted an application seeking certification for certain activities and methods of operation relating to the export of products and services worldwide.

Equinomics intends to act as a commission agent, distributor, consultant, or representative for U.S. suppliers of goods and services for export. These suppliers may include minority-controlled companies that are clients of the Minority Business Development Agency and the Small Business Administration. The products that the applicant intends to export or represent for export will be all-inclusive and limited only by the laws of the United States.

Equinomics intends to offer the following export facilitation services: consulting, international market research, product research and design, transportation, freight forwarding, trade documentation, customs brokerage, finance, foreign exchange transactions, advertising, marketing, foreign order processing, insurance, licensing of foreign manufacturers, modification of products for export resale, warehousing, provision of barter and countertrade assistance, legal and translation aid, and provision of accounting and collection services.

Equinomics intends to enter into exclusive and non-exclusive agency, distributorship, consulting and representation agreements with U.S. suppliers of goods and services for export, including competing suppliers in the same industry. Equinomics also proposes to enter into and terminate exclusive and non-exclusive agreements with distributors, sales representatives, agents and customers located in foreign countries and in the United States for

goods and services being exported. All of the aforementioned types of agreements may contain territorial, customer, price and/or quantity restrictions.

Equinomics intends to coordinate and share business information among competing suppliers of goods and services in the same industry for the packaging of quotations responsive to foreign bid invitations. Equinomics also proposes to consult and exchange information with its competitors to ascertain the existence of, prepare bids for, and share business from foreign customers.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued. Information submitted by any person in connection with this application will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: April 5, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-9632 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat: Denial of a Petition to List the Chesapeake Bay Strain of Striped Bass

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of determination on petition.

SUMMARY: On December 12, 1983, Mr. James Pollock, on behalf of Stripers Unlimited, submitted a petition to the National Marine Fisheries service to list the Chesapeake Bay "strain" of striped bass *(Morone saxatilis)* under the Endangered Species Act of 1973 (ESA). The Assistant Administrator for Fisheries has determined that the petition does not meet the requirements of Section 4(b)(3)(A) of the ESA because it does not present substantial scientific or commercial information indicating that the proposed listing may be warranted.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Montanio, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washingtion, D.C. 20235 (tel. 202/634-7529), or Mr. Douglas Beach, Habitat Protection Branch, Northeast Region, National Marine Fisheries Service, Gloucester, Massachusetts 01930 (tel. 617/281-3600 ext. 288).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973 (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife (List). Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition the Secretary must determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This information standard for petitions is the result of an amendment made to Section 4 of the ESA in 1982. Proposed regulations implementing these amendments were published in the **Federal Register** (48 FR 36062-36069) on August 8, 1983. These regulations have not yet been finalized. The National Marine Fisheries Service (NMFS) interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted. The criteria used in making such determinations are found in 50 CFR 424.14(b). These criteria are essentially the same as those contained in the proposed regulations implementing the 1982 amendments to Section 4 of the ESA (48 FR 36062-36069).

On February 2, 1982, Stripers Unlimited, Inc., South Attleboro, Massachusetts, submitted a previous petition to list the Chesapeake Bay "strain" of striped bass as an endangered or threatened species under the ESA. That petition identified the well documented decline of striped bass stocks in the Chesapeake Bay, the decline of commercial catches, and the low reproductive success of striped bass in the Chesapeake Bay for over a decade. The NMFS determined that the petition contained substantial information indicating that the proposed action may be warranted and conducted a status review of the striped bass. Based on the results of the status review, the NMFS determined that listing the striped bass as endangered or threatened was not warranted. This finding was published in the **Federal Register** on January 14, 1983 (48 FR 1726).

Petition Received

On December 23, 1983, the NMFS, NOAA, Department of Commerce, received a petition from Mr. James Pollock of Sherburne, Powers, & Needham, Boston, Massachusetts, on behalf of Stripers Unlimited, to list the portion of the Chesapeake Bay "strain" of striped bass over 50 pounds as endangered and those under 50 pounds as threatened. This petition is similar to and restates much of the information presented in the Stripers unlimited 1982 petition describing the decline of striped bass commercial catches on the East Cost and the long term failure of striped bass spawning within Chesapeake Bay. The petitioner's basis for resubmitting the petition centers on a rebuttal of the NMFS January 14, 1983, status review and reports of the Stripers Unlimited observations of hatchery-raised striped bass eggs. This information is used by the petitioner in support of the hypothesis that since the late 1950's the Chesapeake Bay "strain" of striped bass has suffered genetic damage, possibly due to poor environmental conditions on its spawning grounds. The petition states that this genetic damage is manifested in physical and physiological differences in the striped bass eggs, causing them to be less viable and resulting in higher mortality of young. It is the petitioner's view that fish born before this genetic damage occurred should be protected to allow for recruitment of viable young and ensure the survival of the Chesapeake Bay "strain" of striped bass. Therefore, the petitioner believes that the portion of the Chesapeake Bay "strain" of striped bass over 50 pounds should be listed as an endangered species, and those under 50 pounds as a threatened species.

Conclusions

The petition was reviewed by NMFS staff familiar with the striped bass and current research and management programs for this species to determine if the petition presented substantial new information, not considered in the status review, indicating that the proposed listing may be warranted. The NMFS concludes that the December 12, 1983, petition submitted by Mr. James Pollock, on behalf of Stripers unlimited, does not contain sufficient information to refute the conclusions reached in the January 14, 1983, status review. The NMFS believes that the information in the

petition to substantiate the genetic damage that allegedly affects the Chesapeake Bay "strain" of striped bass is either not supported by scientific data, or is contradicted by information available in the scientific literature. For these reasons, the NMFS determines that the petition does not present substantial scientific or commercial information indicating that the proposed action may be warranted, and therefore, the petition is denied.

Related Activities

The NMFS, other Federal agencies, State agencies and the Congress have been aware of the decline in the striped bass stock for some time and have implemented a number of management and research efforts to identify and reverse the processes that have contributed to the observed decline in the abundance of striped bass. The 1983 status review presented by NMFS stated that the long-range research conducted under the Emergency Striped Bass Study as well as other studies would enable NMFS to assess more reliably the status of the striped bass. An interim Emergency Striped Bass Study Report, summarizing the results of research completed to date, will soon be available. Implementation of the Interstate Fisheries Management Plan for Striped Bass by the State has progressed and other measures to reduce fishing mortality are being developed. The NMFS will continue to review this information and other research results as they become available to monitor the status of the striped bass and the need for consideration of protective measures under the ESA.

Dated: April 4, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84-9527 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Level for Certain Cotton Textile Products Exported From Haiti

April 5, 1984.

On February 14, 1984, a notice was published in the **Federal Register** (49 FR 5651) announcing that, on January 30, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested that the Government of Haiti enter into consultations concerning exports to the United States of cotton dressing gowns in Category 350, produced or manufactured in Haiti.

The United States Government has decided, pending further consultations with the Government of Haiti to reach a mutually satisfactory solution concerning this category, to control imports of cotton textile products in Category 350, produced or manufactured in Haiti and exported during the twelve-month period which began on January 30, 1984 and extends through January 29, 1985 at a level of 18,754 dozen.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textiles Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 350 exported during the twelve-month period which began on January 30, 1984 in excess of the designated restraint level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 25 and April 1, 1982; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 11, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categry 350, produced or manufactured in Haiti and exported during the twelve-month period which began on January 30, 1984, in excess of 18,754 dozen.[1]

Textile products in Category 350 which have been exported to the United States prior to January 30, 1984 shall not be subject to this directive.

Textile products in Category 350 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Haiti and with respect to imports of cotton textile products from Haiti has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9521 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Limit for Certain Cotton Textile Products Exported From Peru

April 5, 1984.

On February 14, 1984, a notice was published in the **Federal Register** (49 FR 5652) announcing that, on January 31, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested that the Government of Peru enter into consultations concerning exports to the United States of cotton duck fabric in Category 319, produced or manufactured in Peru.

The United States Government has decided, inasmuch as consultations with the Government of Peru to reach a mutually satisfactory solution concerning this category have not been held, to control imports of cotton textile products in Category 319, produced or

[1] The level of resraint has not been adjusted to reflect any imports exported after January 29, 1984.

manufactured in Peru and exported during the twelve-month period which began on January 31, 1984 and extends through January 30, 1985 at a level of 15,076,495 square yards.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 319 exported during the twelve-month period which began on January 31, 1984 in excess of the designated restraint limit.

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed effective on April 11, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 319, produced or manufactured in Peru and exported during the twelve-month period which began on January 31, 1984, in excess of 15,076,495 square yards.[1]

Textile products in Category 319 which have been exported to the United States prior to January 31, 1984 shall not be subject to this directive.

Textile products in Cateogory 319 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

[1] The level of restraint has not been adjusted to reflect any imports exported after January 30, 1984.

The action taken with respect to the Government of Peru and with respect to imports of cotton textile products from Peru has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9522 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Harbor Project, Southeast Missouri Port, Cape Girardeau and Scott Counties, Missouri

AGENCY: Army Corps of Engineers, St. Louis District, DOD.

ACTION Notice.

SUMMARY:

1. *Proposed Action.* The proposed action includes construction of a 1,800-foot long, 130-foot wide, 9-foot deep slackwater harbor channel on the Mississippi River approximately at River Mile 48.0, near Gray's Point, Missouri. Material excavated form the channel, as well as material from a nearby quarry disposal site, would be placed around the harbor channel to provide 57 flood-free acres suitable for industrial development.

2. *Alternatives.* Reasonable alternatives that have been considered in some detail include a fastwater port along the Mississippi River near Gray's Point, as well as enlarged (2,800-foot and 2,200-foot) designs of the proposed slackwater harbor.

3. *Scoping.* A draft Detailed Project Report and Environmental Assessment for this project was furnished to pertinent agencies, organizations, and private interests for review and comment in October 1983. In conjunction with this, a public meeting was held October 17, 1983, to further discuss and request comments on the project.

Comments were received from the U.S. Fish and Wildlife Service (FWS) and the Missouri Department of Conservation (MDC) alleging significant adverse impacts on wetlands in the project area. These comments prompted a decision by the St. Louis District (SLD) to prepare an EIS for the project.

Scoping activities associated with preparation of this DEIS will primarily be directed toward accurately determining the extent of wetlands in the project area and the magnitude of impacts on those wetlands. A joint field trip to the project area with FWS, MDC, and SLD personnel is planned.

No public meeting associated with this scoping process is considered necessary, and none is planned.

The DEIS will be mailed out in May 1984 for a 45-day public review.

ADDRESS: For further information, contact Ms. Sharon Cotner, U.S. Army Corps of Engineers, Plan Formulation Branch, 210 Tucker Boulevard, North, St. Louis, Missouri 63101. Commercial phone (314) 263-5015, FTS 273-5015.

Dated: March 26, 1984.

Gary D. Beech,

Colonel, CE, District Engineer.

[FR Doc. 84-9504 Filed 4-9-84; 8:45 am]

BILLING CODE 3710-55-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Anti-Submarine Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Anti-Submarine Warfare Task force will meet on April 30-May 1, 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy anti-submarine warfare long term strategies. The entire agenda for the meeting will consist of discussions of anti-submarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Alexandria, Virginia 22311. Telephone: (703) 756–1205.

Dated: April 5, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9477 Filed 4-9-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Ship Decoy Systems will meet on April 25 and 26, 1984 at HRA Inc., 1701 No. Ft. Myer Drive, Suite 1105, Arlington, Virginia. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on April 25, 1984; and commence at 9:00 a.m. and terminate at 4:00 p.m. on April 26, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to receive various briefings relating to the ship decoy systems program, its test plans, and trainable versus fixed launchers. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 5, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9476 Filed 4-9-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Cordele Operating Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Cordele Operating Company (Cordele) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: May 10, 1984.

ADDRESS: Send comments to: James O. Neet, Jr., Chief Counsel, Economic Regulatory Administration, Dallas Office, 1341 West Mockingbird Lane, Suite 200E, Dallas, Texas 75247.

FOR FURTHER INFORMATION CONTACT: James O. Neet, Jr., Chief Counsel, Economic Regulatory Administration, Dallas Office, 1341 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247, 214/767–7401. Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On March 2, 1984, the ERA executed a proposed Consent Order with Cordele Operating Company. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Cordele produced and sold crude oil during the period covered by the Consent Order and therefore was subject to the price rules imposed by 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D. To resolve certain potential civil liability arising in connection with the first sales of crude oil by Cordele during the period covered by the Consent Order, the ERA and Cordele entered into a Consent Order. Cordele produced and sold domestic crude oil at prices in excess of the applicable ceiling prices. Cordele denied these allegations, but determined that this Consent Order was an equitable resolution of these allegations which avoided the disruption of its orderly business functions and the expense and inconvenience of protracted and complex litigation.

II. Refunds

Under the Consent Order, Cordele Operating Company, will pay the sum of $1,300,000.00 to the Department of Energy (DOE). The DOE will hold the funds in an appropriate account pending a determination of the disposition of the funds in accordance with applicable statutes and regulations. Payment is to be made on or before fifteen (15) days after the effective date of the Consent Order. If payment is not made within the specified period of time, Cordele agrees to pay interest on the unpaid balance. Upon full satisfaction of the terms and conditions of this Consent Order by Cordele, the DOE releases Cordele from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

The foregoing provisions for payment of the refund amount were concurred in after ERA attempted to determine and identify all injured parties. These attempts were unsuccessful due to the nature of the business transactions in which Cordele was engaged during the settlement period. Cordele's activities were of such nature so as to make it impossible to identify specific parties who or which may have been injured.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on Cordele Operating Company Consent Order." The ERA will consider all comments it receives by 4:30 p.m., local time, on 30 days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Tex., on the 6th day of March 1984.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 84-9489 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6COC00249]

Holly Energy Inc. and Holly Corp.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Holly Energy, Inc. and Holly Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Holly Energy, Inc. and Holly Corporation of Dallas, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.79, 212.73 and 212.74. The total violation alleged during January 1978 through December 1980 is $773,098.79.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 6G-030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9485 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Saxon Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Saxon Oil Company (Saxon), 1001 Wall Towers West, Midland, Texas 79703. This Proposed Remedial Order charges Saxon with pricing violations in the amount of $275,107.04 connected with the sale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period of September 1, 1973 through September 30, 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James A. Martin, Manager, Litigation Support Group, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247 or by calling (214) 767-7483. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Tex., on the 23d day of March 1984.

Ben Lemos,

Director, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-9484 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Storey Oil Co., Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Storey Oil Company, Inc. ("Storey") of Seymour, Indiana. This PRO charges Storey with pricing violations in the amount of $87,311.04 exclusive of interest, connected with the sale of motor gasoline from September 1, 1979 through November 30, 1979.

On April 8, 1983 the ERA issued a PRO to Storey in the amount of $192,799.76 which was immediately rescinded by the ERA because the document did not accurately represent the ERA's determinations. This subsequent PRO supercedes the PRO issued April 8, 1983 and covers the matters addressed in that prior PRO.

A copy of the PRO, with confidential information deleted, may be obtained from David H. Jackson, Director, Kansas City Office, ERA (816)374-2092. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Kansas City, Mo., on the 22d day of March 1984.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-9486 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6C0C00255]

Texakota, Inc.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Texakota, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Texakota, Inc. of Houston, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.79, 212.73 and 212.74. The total violation alleged during January 1978 through December 1980 is $409,622.24.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 6G-030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9487 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6COX002798]

Traco Petroleum Co., Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Traco Petroleum Company.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Traco Petroleum Company of Houston, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.186 and 212.183. The total violation alleged during October 1979 through December 1980 is $6,955,218.78.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S.

Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Room 6G-030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9488 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA84-2-48-000]

ANR Pipeline Co.; Notice of PGA Rate Change Filing

April 5, 1984.

Take notice that on April 2, 1984, ANR Pipeline Company (ANR), pursuant to Section 15 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission (Commission) Twenty-Second Revised Sheet No. 7 and Tenth Revised Sheet No. 7a to Original Volume No. 1 of its Tariff to be effective May 1, 1984.

Twenty-Second Revised Sheet No. 7 reflects a net decrease in ANR's rates applicable to Rate Schedule SGS-1 and LVS-1 of 22.20¢ and 22.18¢, respectively, per dekatherm (dth), a 22.13¢ per dth decrease in the Gas Cost Component of its CD-1 and MC-1 Rate Schedules, a .3¢ decrease in the monthly demand rate applicable to the CD-1 and MC-1 Rate Schedules, a decrease of .04¢ per dth in the non-gas commodity component of the CD-1 Rate Schedule and a $9,334 decrease in the monthly fixed charge of the non-gas commodity component of the MC-1 Rate Schedule.

ANR states that the reason for the net decrease in its rates results from producer price increases associated with the Natural Gas Policy Act of 1978, the replacement of older lower cost sources of supply with new, more expensive sources and the payment to producers of production related costs authorized by the Commission's Order No. 94, *et al.*, offset by certain credits required by the agreements reached in *Michigan Wisconsin Pipe Line Company*, Docket Nos. RP82-80, *et al.*, *Michigan Wisconsin Pipe Line Company*, Docket Nos. RP80-100-107, *et al.*, and *Offshore Construction Costs of Natural Gas Pipelines*, Docket Nos. RP79-28-000, together with a reduction of the surcharge associated with its deferred purchase gas costs.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Comissionin determing 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,

Acting Secretary.

[FR Doc. 84-9581 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-300-000]

Consolidated Gas Supply Corp.; Notice of Application

April 5, 1984.

Take notice that on March 13, 1984, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84-300-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of gas under an October 31, 1983, exchange agreement, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Consolidated and Pennzoil Exploration and Production Company (Pennzoil) have entered an exchange agreement which consolidates the terms and conditions of Consolidated's Rate Schedules F3, F4, and F5, Consolidated's non-jurisdictional sales contract S158, and Pennzoil's Rate Schedule RS-10. The application further states that the proposed consolidation would ease the administrative and accounting burden associated with administering five separate contracts. The application indicates that upon receiving Commission authorization, Consolidated's Rate Schedules F3, F4, and F5 and sales contract S158 would be cancelled and that Consolidated would file to delete Rate Schedules F3, F4, and F5 from Volume No. 3 of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9586 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-22-004 (PGA84-2) (IPR84-1) and RD&D84-1)]

Consolidated Gas Transmission Corp.; Notice of PGA Compliance Filing

April 5, 1984.

Take notice that on April 2, 1984, Consolidated Gas Transmission

Corporation (Consolidated) filed Substitute Thirty-Eighth Revised Sheet No. 16 of the Third Revised Volume No. 1 of its Tariff to comply with the February 28, 1984, order in this proceeding.

The filing eliminated certain gas costs computed in accordance with Order No. 93 and also reflects downward adjustments to rates made by Consolidated's pipeline suppliers.

Consolidated states that copies of the filing were served on all of its customers and interested state 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, N.E., Washington, D.C. 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 petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84-9587 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-51-000 (PGA84-2 and IPR84-2)]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 5, 1984.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 30, 1984, tendered for filing Forty-Sixth Revised Sheet No. 57, and Eighth Revised Sheet No. 57-A to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective May 1, 1984.

Forty-Sixth Revised Sheet No. 57 includes a revised purchased gas cost adjustment which reflects an increase in the cost of gas purchased from TransCanada PipeLines Limited, its sole supplier of natural gas, as a result of an increase in the heat content of the gas.

In addition, the revised tariff sheet reflects a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing September 1, 1983 and ending February 29, 1984.

Eighth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1984 and ending October 31, 1984. No incremental costs are estimated for this period.

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 Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. 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 to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9590 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-46-009]

Kentucky West Virginia Gas Co.; Notice of Proposed Change in Rates

April 5, 1984.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 30, 1984, tendered for filing with the commission its Thirtieth Revised Sheet No. 27 and Ninth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1984.

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1. Kentucky West's effective tariff rate is reduced from 405.07¢/dth to 366.34¢/dth, effective May 1, 1984.

Kentuck West states that effective February 1, 1984, the Company has exercised its rights under the economic or market-out clauses of various contracts of its producer affiliates, Kepco and Philadelphia Oil Company; for Devonian Shale gas purchased under Section 107 of the NGPA, Kentucky West has specified that it would pay a wellhead price of $3.525 per dth plus applicable severance taxes and gathering allowances.

Kentucky West further states that, in making the instant filing, it does not waiver or prejudice its right to continue to prosecute its petition for review with the Untied States Court of Appeals for the Fifth Circuit of the Commission's Order dated December 2, 1982, denying Kentucky West's application for rehearing of the Order issued April 30, 1982 in Docket Nos. TA82-2-46-001 (PGA-2) (IPR82-2). (*Kentucky West Virginia Gas Company* vs *FERC*, Case No. 82-4595—filed December 3, 1983).

Kentucky West further states that, in making the instant filing, it does not waive any rights it may have to a filing to charge and collect NGPA prices for all Company-owned production retroactive to December 1, 1978, nor does it waive any rights to collect any carrying charges or interest charges applicable thereto.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commission and upon each party on the service list of Docket No. RP83-46.

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, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9591 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-284-000]

K N Energy, Inc.; Notice of Application

April 5, 1984.

Take notice that on March 6, 1984, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-284-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to transport gas on behalf of Union Oil Co. of California (Union) under a gas transportation agreement dated October 31, 1983, and to construct and operate a tap on its pipeline in Fremont County, Wyoming, to effectuate redelivery of the gas, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

K N is proposing to transport for Union, on a best-efforts basis, up to 4,000 Mcf of gas per day for a period of 24 months. K N would charge 2.64 cents per Mcf of gas transported, it is explained. To effectuate the proposed transportation, K N is proposing to construct a side tap in Sec. 10, T. 32 N., R. 95 W., Fremont County, Wyoming, at a total cost of $5,000. It is stated that on September 5, 1958, Union was authorized in Docket No. G-7193 to sell and deliver to Montana-Dakota Utilities (MDU) surplus gas from Union's working interest of gas in the Worland area of Wyoming. It is explained that on January 20, 1983, MDU advised Union of the necessity of curtailing its purchases and on March 17, 1983, Union made application to the Commission to abandon partially the service related thereto for a limited period of time (Docket No. G-7193-004). Union stated its intent to use all or a portion of the gas released by MDU in an enhanced oil recovery project as fuel for steam generators. Union and K N entered into the subject agreement for the transportation of gas by K N on behalf of Union for delivery for Union's account.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9592 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-62-000]

Montana-Dakota Utilities Co.; Notice of Proposed Change in Rates

April 5, 1984.

Take notice that on April 2, 1984, Montana-Dakota Utilities Co. ("MDU"), a Delaware corporation, whose mailing address is 400 North Forth Street, Bismark, North Dakota 58501, filed proposed changes in rates to its jurisdictional gas sales and transportation customers.

More specifically, MDU filed the following tariff sheets to its FERC Gas Tariff, which reflect an increase in jurisdictional rates:

Original Volume No. 4

Twenty-Ninth Revised Sheet No. 3A

First Revised Volume No. 2

Twenty-Second Revised Sheet No. 10
Second Revised Sheet No. 10.1

The proposed effective date is May 3, 1984.

Increased revenues from the rates as proposed by MDU would amount to $1,151,328 annually under MDU's Rate Schedules G-1 PR-1, X-1, I-1, X-3, X-5, and X-6.

The filing indicates that MDU has experienced increases in most areas of its cost of service and sharp decreases in its level of sales. Consequently, MDU states, it was required to file for an increase in its jurisdictional rates.

Any person desiring to be heard or to make any protest with reference to said filing should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, 825, North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate in any hearing therein must file a petition to intervene in accordance with the Commission's Rules of Practice and Procedure.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9594 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-214-000]

ARCO Metals Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, ARCO Metals Company (Applicant), of Ansonia Plant 75, Liberty Street, Ansonia, Connecticut 06401 submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,500 kilowatt hydroelectric facility (P. 6985) consists of two developments: a proposed new hydroelectrtric plant which is located adjacent to the Kinneytown Dam in Seymour, Connecticut; and an existing hydroelectric plant located on the premises of Applicant's manufacturing plant in Ansonia, Connecticut.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by

the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9582 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-212-000]

Birch Creek Hydro, Inc.—Lone Pine; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Birch Creek Hydro, Inc., (Applicant) of 2210 Wilshire Blvd., No. 789, Santa Monica, California 70403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3,000 kilowatt hydroelectric facility (P. 7230) will be located near the town of Lone Pine, California.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9583 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-213-000]

Birch Creek Hydro, Inc.—Independence; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Birch Creek Hydro, Inc. (Applicant) of 2210 Wilshire Blvd., No. 789 Santa Monica, California 90403 submitted for filling an application for certification of a facility as qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3,400 kilowatt hydroelectirc facility (P. 7343) will be located near the town of Independence, California.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9584 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-230-000]

City of Covington, Va.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, City of Covington, Virginia (Applicant) James L. Samison, Mayor, 158 North Court Avenue, Covington, Virginia 24426 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.9 megawatt hydroelectric facility (P. 3348) will be located at the existing Gaithright Dam on the Jackson River in Alleghany County, Virginia.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9585 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-425-001]

Electrodyne Research Corp., Gilberton, Pennsylvania; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 5, 1984.

On March 15, 1984, Electrodyne Research Corporation (Applicant), of 1617 Sweetbriar Road, Gladwyne, Pennsylvania 19035, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Gilberton, Pennsylvania. The primary energy source for the facility will be anthracite coal culm. The useful thermal energy output, which will be in the form of process steam, will be utilized in a drying process for carbonaceous materials. The electric power production capacity of the facility will be 79.5 megawatts.

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9588 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-210-000]

Fluid Energy Systems, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Fluid Energy Systems, Inc. (Applicant) of 2210 Wilshire Blvd. No. 699, Santa Monica, California 90403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15,250 kilowatt hydroelectric facility (P. 7372) will be located 150 miles north of Los Angeles, California, 25 miles west of U.S. Highway 395, near the town of Inyokern, California.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9589 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-6-001]

Mercy Hospital and Medical Center; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 5, 1984.

On March 26, 1984, Mercy Hospital and Medical Center, 4077 Fifth Avenue, San Diego, California 92103, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a topping cycle facility utilizing a single 800 kilowatt turbine generator and waste heat recovery boiler with economizer capable of producing 6000 pounds of steam per hour at 117 PSI. The primary energy source will be natural gas. The steam produced by the waste heat recovery boiler will be introduced into the existing high pressure steam header and used principally for heating and cooling loads. Cooling will be accomplished by the installation of a two stage steam absorption chiller which will be tied into the existing steam header.

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9593 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket No. TA84-2-49-000]

Montana-Dakota Utilities Co.; Purchased Gas Cost Adjustment Filing

April 5, 1984.

Montana-Dakota Utilities Co. (MDU), on March 30, 1984, submitted for filing

as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 4

Twenty-Eight Revised Sheet No. 3A
Third Revised Sheet No. 3B

First Revised Volume No. 2

Twenty-First Revised Sheet No. 10
First Revised Sheet No. 10.1
Third Revised Sheet No. 10A

The proposed effective date of MDU's PGA filing is May 1, 1984.

MDU states that this tariff filing is being made pursuant to the Purchased Gas Cost Adjustment Provisions of its FERC Gas Tariff. The proposed changes include a gas cost adjustment of 64.447 cents per Mcf for Rate Schedules G–1, PR–1, I–1, and X–1. In addition, MDU proposes a surcharge adjustment of 8.381 cents per Mcf applicable to Rate Schedules G–1, PR–1, and I–1.

Rate Schedule X–4 shows a gas cost adjustment of 50.573 cents per Mcf and no surcharge adjustment for this filing. The proposed changes are supported by exhibits attached to the filing.

In addition, MDU states that First Revised Sheet No. 10.1 reflects a gas cost adjustment for the sales under Rate Schedule X–5 of 34.125 cents per Mcf.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84–9565 Filed 4–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–299–000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 12, 1984, National Fuel Gas Supply Corporation (Supply), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84–299–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 156.205) that Supply proposes to add an additional point of delivery to its affiliate, National Fuel Gas Distribution Corporation (Distribution), under authorization issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Supply proposes to construct and operate tap facilities necessary to provide an additional point of delivery to Distribution in Benzinger Township, Elk County, Pennsylvania. Supply states that the volumes of gas to be provided through the new point of delivery are within its currently authorized level of sales. Supply further states that it would provide this service pursuant to its Rate Schedule RQ.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9566 Filed 4–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–304–000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 16, 1984, National Fuel Gas Supply Corporation (Supply), 10 Lafayette Square, Buffalo, New York 12403, filed in Docket No. CP84–304–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Supply proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Supply proposes to transport up to 166 Mcf of gas per day and 60,590 Mcf of gas per year, for the account of Ramco Fitzsimons Steel Co., Inc. (Ramco), to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Ramco at Ramco's facilities in Buffalo, New York, pursuant to the terms of the gas transportation agreement dated February 1, 1984 (transportation agreement). Supply states that the current transportation rate is 31.72 cents per Mcf, which includes an added incentive charge of 5.0 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T–2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Ramco is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

Supply states that the gas to be purchased by Ramco involves gas supplies previously under contract to and released by Supply. Ramco would use the gas transported by Supply in industrial furnaces, which are qualified end-uses pursuant to §157.209(e)(2) of the Regulations, it is asserted. Supply states that no new facilities are necessary to effectuate the proposed transportation. It is stated that the proposed transportation would commence on May 31, 1984, and terminate at 11:59 a.m. on June 30, 1985, or upon termination of the contract which term is for three months, effective February 1, 1984, and month to month thereafter, whichever occurs first.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedual Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157,205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9567 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-305-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 16, 1984, National Fuel Gas Supply Corporation (Supply), 10 Lafayette Square, Buffalo, New York 12403, filed in Docket No. CP84-305-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Supply proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83-4-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Supply proposes to transport up to 300 Mcf of gas per day and 40,990 Mcf of gas per year, for the account of Hope's Architectural Products, Inc. (Hope's Architectural), to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Hope's Architectural at Hope's Architectural's facilities in Jamestown, New York, pursuant to the terms of the gas transportation agreement dated February 1, 1984 (transportation agreement). Supply states that the current transportation rate is 31.72 cents per Mcf, which includes an added incentive charge of 5.0 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T-2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Hope's Architectural is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

Supply states that the gas to be purchased by Hope's Architectural involves gas supplies previously under contract to and released by Supply. Hope's Architectural would use the gas transported by Supply in boilers and space heaters, which are qualified end-uses pursuant to § 157.209(e)(2) of the Regulations, it is asserted. Supply states that no new facilities are necessary to effecutuate the proposed transportation. It is stated that the proposed transportation would commence on May 31, 1984, and terminate at 11:59 a.m. on June 30, 1985, or upon termination of the contract which term is for three months, effective February 1, 1984, and month to month thereafter, whichever occurs first.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9566 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-60-000]

National Fuel Gas Supply Corp.; Compliance Filing

April 5, 1984.

Take notice that on March 29, 1984, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective April 1, 1984.

National states that the purpose of this First Revised Volume No. 1 is: (1) To comply with the Federal Energy Regulatory Commission's order to convert to a dekatherm measurement basis; and (2) to clean up the format of Original Volume No. 1. In this regard, National represents that the tendered First Revised Volume No. 1 does not contain any changes beyond those necessary to convert to dekatherm measurement and to more effectively organize National's tariff.

It is stated 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 peition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84-9569 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-250-006]

Northwest Pipeline Corp.; Amendment

April 5, 1984.

Take notice that on March 15, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110-1526, filed in Docket No. CP82-250-006 an amendment to its pending petition to amend the order issued September 30, 1982, in Docket No. CP82-250-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize certain limitations to the scope of the transportation service provided for the account of Beker Industries Corp. (Beker), all as more fully set forth in the amendment which is on file with the Commission and open to public insection.

Northwest states that on September 30, 1982, it was authorized to transport up to 10,000 Mcf of natural gas per day for the account of Beker on a best-efforts basis from various receipt points in the San Juan Basin area in New Mexico to Beker's ammonia plant in Conda, Idaho.

Northwest proposes herein to limit the transportation service authorized by Commission orders dated September 30, 1982, and May 13, 1983, to volumes of up to 3.3 billion Btu per day.

It is asserted that the limitations to the previously authorized transportation service are consistent with the current availability of gas supplies purchased by Beker for transportation.

Northwest indicates that on September 2, 1983, it had filed in Docket No. CP82-250-004 for authorization to amend its transportation service for Beker by reducing daily best-efforts transportation volumes from up to 10 billion Btu to up to 2 billion Btu and by deleting receipt points in the San Juan Basin area of New Mexico. Northwest states that no change is proposed in that request except for the change in daily

transportation volumes from 2 billion Btu 3.3 billion Btu.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 26, 1984, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9570 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-59-000]

Northwest Pipeline Corp. v. Colorado Interstate Gas Co.; Complaint

April 5, 1984.

Take notice that on March 21, 1984, Northwest Pipeline Corporation (Northwest) tendered for filing a Complaint and Petition against Colorado Interstate Gas Company (CIG). Northwest requests a Commission order declaring CIG's liability under section 4.3 of Northwest's Rate Schedule PL-1 for minimum bill payments due and owing; and, for an order requiring CIG's compliance with the terms of Section 4.3 of Rate Schedule PL-1 and requiring CIG to pay an outstanding minimum bill charge of $17,918,945.86 and late charges of $162,006.91. Northwest also requests expedited action on its Complaint.

Northwest states that pursuant to Section 4.3 of its Rate Schedule PL-1, CIG incurred minimum bill liability during the contract year of 1983 in the amount of $17,918,945.86. This amount was invoiced during December of 1983 and pursuant to Section 5 of the General Terms and Conditions of Northwest's tariff, became due on January 25, 1984. CIG, by a letter dated January 20, 1984, gave notice that it would not pay the minimum bill charge and requested the commencement of discussions for the purpose of obtaining an interim waiver agreement of the minimum bill provisions.

Northwest states that it responded to CIG's January 20, 1984, letter with a letter dated February 24, 1984, in which it indicated a willingness to enter into discussions concerning future modifications of the minimum bill requirements, but demanded immediate payment of the minimum bill charges incurred during the 1983 contract year, plus applicable late charges.

Northwest calculated the late charges as of February 24, 1984, as being $162,006.91, pursuant to the General Terms and Conditions of Northwest's Tariff, and states that no such payment has been made by CIG.

Furthermore, Northwest acknowledges its awareness of the pending Notice Of Proposed Rulemaking in Docket No. RM83-71-000, but states that its minimum bill provision calls for obligations in the amount of 60% of CIG's contracted quantities. Northwest states that the proposed rulemaking expresses the Commission's concern for minimum bill obligations above 66⅔% and since its minimum bill provisions are set at 60%, the proposed rulemaking should not affect its Complaint.

Northwest also states that it does not propose to retain the gas cost component of the minimum bill payment due and owing and that it proposes to flow through to its jurisdictional customers the gas component it seeks to collect from CIG.

Northwest certifies that a copy of its complaint has been served upon CIG.

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 Captiol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 4, 1984. 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,

Acting Secretary.

[FR Doc. 84-9571 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-346-000]

Pacific Power & Light Co.; Filing

April 5, 1984.

The filing Company submits the following:

Take notice that on March 28, 1984, Pacific Power & Light Company (PP&L) tendered for filing, Pacific's Revised Appendix 1 for the state of Oregon. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

PP&L requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Bonneville, the Oregon Public Utility Commissioner and Bonneville's District Service Industrial Customers.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9575 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-28-004]

Panhandle Eastern Pipe Line Co.; Change in Tariff

April 5, 1984.

Take notice that on March 29, 1984 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Forty-Eighth Revised Sheet No. 3-A

First Substitute Twenty-Fifth Revised Sheet No. 3-B

An effective date of March 1, 1984 is proposed.

Panhandle states that by Order dated February 28, 1984, the Federal Energy Regulatory Commission (Commission)

accepted for filing, subject to refund and certain conditions, tariff sheets filed by Panhandle Eastern Pipe Line Company (Panhandle) in the above-referenced proceeding.

Ordering Paragraphs (B)(1)(a), (B)(1)(b), and (B)(1)(c) of the Commission's Order dated February 28, 1984 conditioned acceptance of these tariff sheets upon Panhandle filing revised tariff sheets within thirty days to reflect (1) elimination from Account No. 191 cost determined on an "as delivered" basis, (2) utilization of more representative estimated sales volumes in Account No. 191 and (3) removal of carrying charges from Account No. 191 associated with the unrecovered gas costs for the months of June 1983 through August 1983.

Panhandle states that these substitute revised tariff sheets reflect compliance with Ordering Paragraphs (B)(1)(a), (B)(1)(b), and (B)(1)(c) of the Commission's Order dated February 28, 1984.

Panhandle further states that concurrently with this compliance filing, Panhandle filed a Request for Rehearing of the Commission's Order dated February 28, 1984, and that the compliance filing was made without prejudice to Panhandle's claims stated in its Request for Rehearing.

Among other things, the Request for Rehearing states that the Commission erred in not putting into effect Panhandle's alternate revised tariff sheets because the Stipulation and Agreement in Docket No. RP82-58 on which the first set of revised tariff sheets were based, has not been accepted. Accordingly, Panhandle also submitted for filing, to become effective March 1, 1984, six (6) copies of the following Substitute Alternate Revised Sheets to its FERC Gas Tariff, Original Volume No. 1, which are based on Panhandle's currently effective tariff provisions and do not reflect the Docket No. RP82-58 settlement:

First Substitute Alternate Forty-Eighth Revised Sheet No. 3-A
First Substitute Alternate Twenty-Fifth Sheet No. 3-B

These sheets also reflect the three compliance adjustments described above, and Panhandle requests that such sheets should be made effective upon grant of Panhandle's Request for Rehearing.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

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, D.C. 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 petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84-9576 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP65-392-000, and CP65-392-001]

South Georgia Natural Gas Co; Petitions To Amend

April 5, 1984.

Take notice that on February 29, 1984, and March 12, 1984, South Georgia Natural Gas Company (Applicant), 1217 Old Albany Road, Thomasville, Georgia 31792, filed in Docket Nos. CP65-392-000, and CP65-392-001, respectively petitions to amend the order issued July 27, 1965, as amended March 14, 1966, pursuant to Section 7(c) of the Natural Gas Act so as to authorize a volumetric increase on sales to Occidental Chemical Company (Occidental), continued delivery of natural gas to Occidental's Suwannee River Plant, and construction and operation of a new sales tap, all as more fully set forth in the petitions to amend which are on file with the Commission and open to public inspection.

It is stated that pursuant to the order issued July 27, 1965, as amended March 14, 1966, Applicant was authorized to transport natural gas for direct sales to Occidental. It is also stated that the March 14, 1966, order authorized deliveries of 4,125 Mcf of gas per day to Occidental and covered only two delivery points. Applicant avers that in accordance with its direct sales agreement with Occidental dated June 7, 1965, as amended December 20, 1965, Applicant has historically supplied Occidental's entire fuel requirements. Applicant further avers that Occidental relies on Applicant as its sole supplier of natural gas and that Applicant has delivered in excess of its 4,125 Mcf per day and made deliveries to Occidental at three delivery points. Applicant submits that Occidental's increased requirements have been recognized in its tariff which is on file at the Commission and that the Index of Requirements for Applicant's curtailment plan developed in 1973 listed three points of delivery to Occidental. Applicant proposes an increase in its authority to transport natural gas for direct sales to Occidental of up to 15,250 Mcf per day, which Applicant claims is based on Occidental's historical maximum take and would enable Applicant to meet Occidental's presently anticpated fuel requirements. Applicant further requests authority to continue delivering natural gas to Occidental's Suwannee River Plant, the third point of delivery to Occidental as specified in Applicant's tariff, which Applicant avers is not covered in the Commission's March 14, 1966, order.

Applicant also proposes to construct and operate a sales tap to establish a new delivery point to Occidental. Applicant assets that Occidental is shifting most or all of its phosphate drying operation to a new location and the proposed sales tap would enable Occidental to receive gas at that location. Applicant further asserts that Occidental estimates that it would purchase approximately 2,500 Mcf of gas per day through the proposed sales tap, which is approximately the same quantity that it currently purchases for its drying operations at its present location.

Applicant states that in accordance with the pricing provisions of a direct sales agreement between Applicant and Occidental dated April 1, 1975, gas delivered through the proposed sales tap would be purchased by Occidental at a base rate of $4.50 per Mcf. Applicant further states that this rate would be adjusted to reflect changes in the price payable by Applicant to its supplier, Southern Natural Gas Company, under Southern's Rate Schedule OCD-2 when calculated at a load factor of 100 percent.

Applicant states that the estimated cost of the proposed facilities is $160,000.

Any person desiring to be heard or to make any protest with reference to said petitions to amend should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be

considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9577 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-18-001]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 5, 1984.

Take notice that South Georgia Natural Gas Company (South Georgia) on March 30, 1984 tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The purpose of these tariff sheets is to update the cost of gas in Docket No. RP84-18-000 to reflect the current level of purchased gas costs as represented in South Georgia's Purchased Gas Adjustment (PGA) filing which became effective January 1, 1984.

On October 31, 1983 South Georgia filed revised tariff sheets which increased jurisdictional revenues by approximately $1.0 million. The Commission accepted for filing and suspended those proposed tariff sheets to become effective May 1, 1984, subject to refund. The purchased cost of gas included in the tariff sheets filed on October 31, 1983 were the gas costs reflected in South Georgia's July 1, 1983 PGA filing. South Georgia states that the purpose of the proposed tariff sheets is to update the tariff sheets filed October 31, 1983 to reflect the gas cost in South Georgia's currently effective PGA. Since the proposed tariff sheets contain the same costs as included in South Georgia's original rate filing, modified only to reflect South Georgia's current purchased gas costs, South Georgia requests that the Commission allow the proposed tariff sheets to become effective on May 1, 1984, subject to refund in accordance with Ordering Paragraph (B) of the Commission's November 28, 1983 order in this proceeding and that the Commission grant any waivers that may be necessary.

Copies of this filing have been served upon South Georgia's jurisdiction customers, interested state public service commissions and all parties of record.

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, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84-9578 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-307-000]

Southern Natural Gas Co.; Application

April 5, 1984.

Take notice that on March 19, 1984, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84-307-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of Tenneco Oil Company's (Tenneco) offshore gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to transport up to 1.6 billion Btu of uncommitted gas reserves per day on an interruptible basis, on behalf of Tenneco for ultimate delivery to Air Products and Chemicals, Inc. (Air Products), to satisfy a contractual obligation Tenneco owes Air Products and/or for use in Tenneco's Chalmette Refinery in Orleans Parish, Louisiana. Applicant states that such volumes of uncommitted reserves are located under Viosca Knoll Blocks 899 and 900, offshore Louisiana.

Applicant further states that Tenneco would deliver its uncommitted gas to Applicant at the existing point of interconnection at the inlet of Applicant's measuring facilities on Shell Oil Company's B Platform in Block 62, South Pass Area, offshore Louisiana. Applicant proposes to redeliver a thermally equivalent quantity of gas (less Tenneco's prorated share of gas lost, vented or unaccounted-for during transportation) to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for Tenneco's account at the onshore terminus of that 26-inch pipeline jointly owned by Tennessee and Columbia Gulf Transmission Company known as Project SP77. Applicant states that Tenneco agreed to pay Applicant a transportation charge of 43.7 cents per million Btu for this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9579 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-183-001]

Transcontinental Gas Pipe Line Corporation; Amendment to Application

April 6, 1984.

Take notice that on March 21, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-183-001 an amendment to its pending application filed in Docket No. CP84-183-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco originally sought permission and approval to abandon certain facilities related to purchases of natural gas from Valero Interstate Transmission Company (Vitco), and to abandon the jurisdictional service, if any, rendered by means of such facilities. In the amendment, Transco amends its application by withdrawing the request for permission and approval to abandon facilities and transportation arrangement with Vitco.

Transco states that pursuant to a service agreement dated September 3, 1980, between Transco and Vitco, Vitco transports on a best-efforts basis gas which Transco purchases from several producers in the South McAllen Field, Hidalgo County, Texas. Transco states that the facilities which it sought to abandon in its original application are used to accept from Vitco both redelivery of gas transported pursuant to the service agreement and delivery of gas purchased by Transco from Vitco. Transco states that it does not seek to terminate or abandon its transportation arrangement with Vitco. As amended, Transco's application seeks only permission and approval to abandon the jurisdictional service, if any, which Transco renders by its purchase of natural gas from Vitco.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9560 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 5, 1984.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 30, 1984 Thirtieth Revised Sheet No. 12, Thirtieth Revised Sheet No. 15, and Eleventh Revised Sheet No. 16 (the "proposed" sheets) to Second Revised Volume No. 1 of Transco's FERC Gas Tariff. These "proposed" tariff sheets, which are proposed to be effective May 1, 1984, reflect a net increase of 27.4¢ per dekatherm (dt) in the commodity or delivery charge of Transco's CD, G, OG, E, PS, ACQ and S-2 rate schedules.

In the alternative, Transco has tendered for filing, to be effective May 1, 1984, Alternate Thirtieth Revised Sheet No. 12 and Altenate Thirtieth Revised Sheet No. 15 (the "alternate" sheets), which reflect the same increase as the "proposed" sheets.

Transco states that the proposed sheet nos. 12 and 15 are designed on top of the sheets based upon the modified fixed-variable method of rate design contained in Appendix A to the March 1, 1984 filing in Docket No. RP83-137, while the alternate sheet nos. 12 and 15 are designed on top of the sheets in Appendix B to the March 1 filing which are based upon the *Atlantic Seaboard* method of rate design. In either case, sheet no. 16 is the same.

Whichever of the sheet nos. 12 and 15 are accepted by the Commission will depend upon its determination of which of the alternate rate designs in Docket No. RP83-137 is made effective by the Commission. In either case, the proposed effective date herein is May 1, 1984, as is the proposed effective date for enclosed sheet no. 16.

Transco describes the foregoing changes as follows:

1. Tracking Rate Adjustment Under PGA Clause (Section 22)

The PGA tracking rate change increase of 27.4¢ per dt is comprised of: (a) A 24.5¢ per dt increase in the current gas cost adjustment; (b) a 1.9¢ per dt increase in the Deferred Adjustment; and (c) a 1.0¢ per dt increase in the Industrial Sales Program described below. The 1.9¢ increase in the Deferred Adjustment represents the difference between the currently effective positive Deferred Adjustment of 7.8¢ per dt and the proposed positive Deferred Adjustment of 9.7¢ per dt, which is made up of the following proposed surcharges:

(i) A 17.6¢ per dt positive surcharge, required to eliminate over the six-month period commencing May 1, 1984, the debit balance of $61,066,241 accumulated in Transco's applicable subaccount of the Unrecovered Purchased Gas Cost Account (FERC Account No. 191) as of February 29, 1984;

(ii) A 5.1¢ per dt negative surcharge, designed to flow through to Transco's customs during the six-month PGA period commencing May 1, 1984, approximately one-half of the amount of refunds which Transco estimates are due from producers as a result of the recent reversal of FERC Orders 93 and 93A; and

(iii) A 2.8¢ per dt negative surcharge, representing the estimated reduction in gas costs to be recorded in FERC Account No. 191 in subsequent months due to lags in receiving allocation statements from producers during the actual six-month period beginning November 1, 1983.

2. Industrial Sales Program (ISP) Surcharge (RP83-11 Settlement Agreement, Article II C)

In Transco's Revised PGA rates filed November 18, 1983, the ISP surcharge amounted to 8.2¢ per dt, designed to eliminate over the 12-month period commencing November 1, 1983 a balance of $66,531,850 in the ISP subaccount within Account No. 191. As of April 30, 1984, it is estimated that that balance will have been reduced to $32 million. The amortization of that amount during the remainder of the original 12-month period (i.e., the six-month period commencing May 1, 1984) results in a 9.2¢ per dt surcharge, which is an increase of 1.0¢ per dt in the Revised PGA rates filed November 18, 1983 with respect to this item.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State 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, D.C. 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 petitions or protests should be filed on or before April 16, 1984. 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,

Acting Secretary.

[FR Doc. 84-9561 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-302-000]

Trunkline Gas Co.; Application

April 5, 1984.

Take notice that on March 15, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-302-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the delivery of natural gas to The Alpha Corporation, formerly Alpha Chemical Corporation (Alpha), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to sell and deliver an additional 450 Mcf of natural gas per day on an interruptible basis to Alpha at its plant in Collierville, Tennessee. Currently, Applicant states that it delivers 350 Mcf of gas per day (200 Mcf firm and 150 Mcf interruptible) to Alpha; therefore, with the new contract, total deliveries would be 800 Mcf per day.

Applicant states that Alpha uses gas in the production of fiber-glass and resins for boat construction at its plant in Collierville, Tennessee, and requires an increase in service from Applicant to accommodate peak requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessarity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9562 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA-84-2-50-000]

Valley Gas Transmission, Inc., Purchased Gas Cost Adjustment Filing

April 5, 1984.

Valley Gas Transmission, Inc. ("Valley"), on March 30 1984 submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, its proposed "Twenty-Eighth Revised Sheet No. 2A" and Original Volume No. 2, its First Revised Sheet No. 10. The proposed effective date is May 1, 1984.

Valley states that this tariff is filed pursuant to its currently effective Purchased Gas Cost Adjustment Provision. The proposed changes involve Valley's "Current Surcharge Adjustment" and "Current Gas Cost Adjustment." The adjustments are supported by computations attached to the filing.

Any person desiring to be heard or protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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,

Acting Secretary.

[FR Doc. 84-9563 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-52-000; PGA 84-2]

Western Gas Interstate Company; Proposed PGA Rate Adjustment

April 5, 1984.

Take notice that on March 30, 1984, Western Gas Interstate Company ("Western") filed herein Twenty-Fifth Revised Sheet No. 3A and Eighth Revised Sheet No. 3B to its FERC Gas Tariff, Original Volume No. 1. Said tariff sheets are proposed to become effective on May 1, 1984.

Western states the proposed change in rates reflected on Twenty-Fifth Revised Sheet No. 3A is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas cost. Western further states the proposed Purchased Gas Cost Adjustment for the Northern Division is 5.03¢ per Mcf; for the Western Division it is 16.83¢ per Mcf; and for the Southern Division it is (33.47)¢ per Mcf. The proposed Purchased Gas Surcharge is 27.25¢ per Mcf for the Northern Division; (124.88)¢ per Mcf for the Western Division and 89.10¢ per Mcf for the Southern Division.

Western also states that Eighth Revised Sheet No. 3B reflects the Projected Incremental Pricing Surcharge for the Period May 1, 1984 through October, 1984 as required by § 282.602(a)(ii) of the CFR.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state 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, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 211). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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,

Acting Secretary.

[FR Doc. 84-9564 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-231-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located in Montgomery County, Maryland, will have an electric power production capacity of 5 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9572 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-232-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located at 9011 Lantana Road, Lake Worth, Florida, will have an electric power production capacity of 5 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9573 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-233-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located at 200 North Pike Road, West Palm Beach, Florida, will have an electric power production capacity of 2 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9574 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-216-000]

Synergics, Inc.; Hackett Mills Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Little Androscoggin River near the towns of Minot and Poland, Androscoggin County, Maine. The hydroelectric facility (P-6398) will consist of an existing dam, an existing power canal, a new powerhouse, and two turbine generator sets. The electric power production capacity of the facility will be 470 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not be 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.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9553 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-222-000]

Synergics, Inc., High Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Towaliga River near the town of Forsyth, Monroe County, Georgia. The hydroelectric facility (P-6907) will consist of an existing dam, an existing power canal, an existing penstock, a rebuilt powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 2000 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9559 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OF84-220-000]

Synergics, Inc.—Goose Creek Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Goose Creek near the town of Leesburg, Lounoun County, Virginia. The hydroelectric facility (P-5927) will consist of an existing dam, a new siphon penstock, a new powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 350 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9557 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-215-000]

Synergics, Inc., Great Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Passaic River in the City of Patterson, New Jersey. The hydroelectric facility (P-2814) will consist of an existing dam, four existing penstocks, an existing powerhouse, and three turbine generator sets. The electric power production capacity of the facility will be 10,950 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9552 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-217-000]

Synergics, Inc., Little Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Hudson, St. Croix County, Wisconsin. The hydroelectric facility (P-7484) will consist of an existing dam, an existing powerhouse, and three turbine generator sets. The electric power production capacity of the facility will be 270 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9554 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-219-000]

Synergics, Inc., Mound Pond Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Burhardt, St. Croix County, Wisconsin. The hydroelectric facility (P-7483) will consist of an existing dam, an existing penstock, an existing powerhouse, and two turbine generator sets. The electric power production capacity of the facility will be 490 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9556 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-221-000]

Synergics, Inc., W. J. Dickey Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Patapsco River near town of Oella, Baltimore County, Maryland. The hydroelectric facility (P-4380) will consist of an existing dam, an existing power canal,an existing

penstock, an existing powerhouse, and a refurbished turbine generator set. The electric power production capacity of the facility will be 600 kilowatts.

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

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9558 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-218-000]

Synergics, Inc., Willow Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Hudson, St. Croix County, Wisconsin. The hydroelectric facility (P-7444) will consist of an existing dam, an existing penstock, a new powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 1200 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in detemining 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.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9555 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 2563-1]

Control Techniques Guideline Document; VOC Equipment Leaks From Synthetic Organic Chemical and Polymer Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of final control techniques guideline (CTG) document.

SUMMARY: The final CTG document for control of equipment leaks of volatile organic compounds (VOC) from synthetic organic chemical and polymer manufacturing plants is available. This final CTG document provides guideance for the States in determining reasonably available control technology (RACT) for VOC equipment leaks from synthetic organic chemical and polymer manufacturing plants.

ADDRESSES: Copies of the final CTG document may be obtained by contacting the Environmental Research Library (MD-35) (919), 541-2777, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guidelines Series—Control of Volatile Organic Compound Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing," EPA-450/3-83-006. Comments received on the draft CTG document are attached as an appendix to the final CTG document and are also available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday at the Chemicals and Petroleum Branch, Room 736, Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina

FOR FURTHER INFORMATION CONTACT: Mr. J. F. Durhan, (919) 541-5671, Chemicals and Petroleum Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 7, 1981 (45 FR 59360), the EPA announced the availability of the draft CTG document for VOC equipment leaks from synthetic organic chemical and polymer manufacturing plants for public review. Twenty-two comments were received from industry representatives and trade groups. The final CTG document was prepared based on the evaluation of the public comments and consideration of supplemental data analyses provided subsequent to the issuance of the draft CTG document in "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs," or AID, EPA-450/3-82-010 (April 982). The major changes made to the draft CTG document included the incorporation of the new emission factors and the emission reduction estimates presented in the AID and exemptions for units with very low VOC emission potential. In addition, process units producing methyl tert-butyl ether were added to the list of process units covered by the CTG, while styrene-butadiene latex units were deleted from coverage by this CTG.

This CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents provide State and local air pollution control

agencies with an initial information based for proceeding with their own analysis of RACT for specific stationary source categories of VOC emissions located within areas where an extension was granted to the attainment of the national ambient air quality standard for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291, because it is designed to implement an EPA policy. Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis. This CTG document is not a "major rule" because it does not impose any new requirements. This notice and the final CTG document was submitted to the Office of Management and Budget (OMB) for review. Any written comments from the OMB to the EPA and any EPA responses to those comments are available for public inspection. See the ADDRESSES section of this notice for the times and addresses.

Dated: April 3, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-9519 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[[OPP-30000/25E] PH-FRL 2562-7]

Ethylene Dibromide; Amendment of Notice of Intent To Cancel Registrations of Pesticide Products Containing Ethylene Dibromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of Notice of Intent to Cancel.

SUMMARY: A Notice of Intent to Cancel the Registrations of Pesticide Products Containing Ethylene Dibromide (EDB) was issued on September 28, 1983. This Notice amends that Notice of Intend to Cancel to permit continued registration and use of EDB as a quarantine fumigant for exported citrus and papaya provided additional worker protection measures are instituted.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Stanley H. Abramson, Pesticides and Toxic Substances Division, Office of General Counsel (LE-132P), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-7505.

The docket of the administrative hearing (FIFRA Docket No. 503, *et al.*) is available for public inspection in the Office of the Hearing Clerk, Room 3708A, 401 M Street, SW., Washington, D.C., from 7:30 am to 4:00 pm, Monday through Friday, except legal holidays. An administrative file containing public comments and publicly released Agency documents relating to this action is available for public inspection from 8 am to 4 pm, Monday through Friday, except legal holidays, in Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

On September 28, 1983, EPA issued a Notice of Intent to Cancel Registration of Pesticide Products Containing Ethylene Dibromide (EDB) which was published in the **Federal Register** of October 11, 1983 (48 FR 46234). The Notice, in relevant part, proposed cancellation of the registrations for pesticide products containing EDB for use as a quarantine fumigant. The quarantine use of EDB involves the fumigation of agricultural commodities, including fresh citrus fruit and papaya, to prevent the spread of several species of fruit flies from regions where they are present to regions where they are absent.

The decision to cancel registrations for the quarantine use was the result of a careful evaluation of the long-term risks to the public health and the economic consequences of cancellation. The economic consequences of this cancellation action were not insignificant. The September 28 Notice, therefore, provided that concellation of registrations for the quarantine use would not become effective until September 1, 1984. This phase out period was provided in order to allow additional time to implement alternative quarantine controls on a commercial scale. While the Agency recognized that continued use of EDB for quarantine purposes during the phase-out period posed some additional risk, it determined that this risk would be acceptable for the brief interim period necessary to permit implementation of alternative control techniques.

Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides that a Notice of Intent to Cancel does not become a final order of cancellation if a person adversely affected by the Notice properly requests an adjudicatory hearing to contest the cancellation. A registrant, Great Lakes Chemical Co., and a number of users of EDB as a quarantine fumigant on citrus and papaya did request a hearing. The users included the Florida Department of Citrus, Florida Citrus Mutual, Florida Citrus Packers, the Indian River Citrus League, Texas Citrus Mutual, the California Citrus Quality Council, and the Hawaii Papaya Industry Association. Because of these requests for a hearing, the Great Lakes Chemical Company registration, 5785-29, and the state local need registrations, CA-810015, FL-760004, HI-780008, and TX-770008 have not been finally cancelled and will not be finally cancelled until conclusion of the ongoing hearing on these registrations (FIFRA Docket No. 503, *et al.*). All other registrations for products containing EDB and labeled for use as a quarantine fumigant will be cancelled by operation of law on September 1, 1984, under the terms of the September 28, 1983 Notice.

B. Amendment to Notice

This amendment to the September 28, 1983 Notice of Intent to Cancel modifies EPA's determination that registrations of EDB for use as post-harvest quarantine fumigant for citrus fruit and papaya are to be cancelled, effective September 1, 1984. Under the terms of the September 28 Notice as amended by this Notice, the terms and conditions of use of the registration of these products may be amended in accordance with this Notice and, if so amended, the registration may continue in effect. In order to remain in effect under the terms of the amended Notice, these registrations must be amended to prohibit use of EDB as a quarantine fumigant, after September 1, 1984, on citrus fruit and papaya for United States consumption and to require certain additional restrictions on the continued use to treat exported citrus and papaya. These additional restrictions, which are detailed below, are intended to provide additional worker protections to further reduce the occupational exposures which have been associated with the post-harvest quarantine use of EDB. Continued authorization for registration of EDB for the limited post-harvest quarantine treatment of exported fruit reflects the Administrator's determination that it is appropriate to ensure that citrus fruit and papaya leading this country be able to meet the quarantine requirements of U.S. trading partners, provided that use can continue without unreasonable adverse effects to American workers. This principle of deference to importing nations' determinations regarding acceptable quarantine procedures is

also consistent with consideration of the benefits of such export markets to United States agriculture. Taking into account the benefits of continued registration of EDB as a post-harvest fumigant for exported citrus and papaya as well as the risks of adverse effects, primarily occupational health risks, which would continue under the required amendments to the registration terms, the Agency has determined that continued registration under these terms and conditions will not cause unreasonable adverse effects on the environment. Detailed below are specific requirements for modification of the terms and conditions for EDB registration as a post-harvest citrus and papaya fumigant for exported fruit and the bases for the determination that such registration will not cause unreasonable adverse effects.

II. Requirements for Modification of Registration Terms and Conditions

In order to avoid cancellation under the terms of the September 28, 1983 Notice of Intent to Cancel, any EDB registration for post-harvest fumigation of citrus fruit and papaya must be modified in the following manner, and the labeling of any pesticide product sold under such registration must reflect these modifications:

1. The registration must be limited to use on fresh citrus fruit and papaya for quarantine control of fruit flies and must otherwise conform to the Agency's ordinary requirements for labeling as to dose, application directions, toxicity warnings, and related matters.

2. Treatment after September 1, 1984, of fresh citrus fruit or papaya for United States consumption must be expressly prohibited.

3. After September 1, 1984, citrus fruit for export outside the territorial United States may be treated only during the months of October, November, December, and January. The label may state that treatment of citrus fruit for export in any other month is permitted only after a written determination by the U.S. Environmental Protection Agency that a significant fruit fly outbreak has resulted in quarantine requirements for exported fruit which cannot be met by appropriate alternative quarantine treatments and that treatment with EDB for such purposes will not cause unreasonable adverse effects on the environment.

4. Fumigation may be conducted only by a certified applicator, and fumigation operations may be conducted only under the supervision of an authorized employee of a state or the United States government.

5. All persons actively engaged in the application or handling of EDB or in the cleanup of any EDB spills must wear self-contained breathing apparatus (SCBA) respirators approved by MSHA/NIOSH, and EDB-resistant gloves (butyl rubber only) and boot covers and apron (made of butyl rubber, nitrile, or polyethylene). All persons entering the fumigation chambers for any purpose within 24 hours following application must wear SCBA respirators approved by MSHA/NIOSH.

6. Fumigation chambers must have ventilation stacks which extend at least 30 feet above the rooftop of each fumigation chamber.

7. The label must provide that when fumigated fruits are shipped by truck directly from the fumigation chambers without interim storage at the site of fumigation, trucks must be aerated in transit to warehouse storage or loading areas.

8. Disposal of unused pesticide products containing EDB must be in accordance with the requirements of the Resource Conservation and Recovery Act and the regulations implementing it, and quantities exempted from those disposal requirements by virtue of small volume or the "farmer exemption" must be disposed of in an approved landfill or incinerator.

III. Bases for Determinations for Amendment to Cancellation Notice

The September 28, 1983 Notice of Intent to Cancel Registrations of Pesticide Products Containing Ethylene Dibromide identified the risks to the general public from dietary exposure to treated fruits and the risks to workers from occupational exposures resulting from treatment as the primary bases for cancellation of EDB registrations for post-harvest quarantine treatment of fruits. The Notice further stated:

The effective date of this cancellation * * * has been delayed until September 1, 1984, to allow USDA/APHIS and the industry time to implement alternative means of quarantine fruit fly disinfestation. After consideration of the disruption likely to be caused by cancellation at this time, and an evaluation of the risk posed by a one-year phase out, the Agency has concluded that continuation of registrations for this use until September 1, 1984, will not pose an unacceptable risk. (October 11, 1983, 48 FR 46234).

In the period since the issuance of that Notice, substantial progress has been made toward the development and implementation of alternatives. For the interstate shipment of citrus from one citrus-producing region to another, recent information indicates that alternatives have almost completely replaced the use of EDB. Quarantine control for this purpose is now obtained by a combination of methods, including fly-free certification programs and use of the chemical fumigant methyl bromide. Efforts to develop further alternatives for citrus quarantine control are continuing. A hot water treatment process for interstate shipment of papayas appears very close to approval for quarantine purposes. As a result of these developments, United States dietary exposure to EDB from post-harvest quarantine treatments is sharply declining. Under the terms of the amended Notice of Intent to Cancel, all dietary exposure to EDB in the United States from these quarantine uses will be eliminated by the express prohibition of post-harvest quarantine treatment of fruit for United States consumption after September 1, 1984.

The only treatment of citrus fruit and papaya permitted after September 1, 1984, will be for export outside the United States, principally to Japan. The governments of importing nations generally require quarantine control of fruit flies for all imported citrus and papaya. EDB remains an established means of achieving this quarantine security. Cold treatment to control fruit flies in citrus, however, has gained acceptance in Japan as an alternative to EDB. United States exporters and the United States Department of Agriculture communicate regularly with the governments of receiving nations on developing information about other alternative quarantine treatments. Determinations regarding the acceptability of quarantine treatments for fruit fly control for citrus and papaya exported by the United States are properly made by the importing nation. Consequently, continued registration of EDB for use on exported citrus and papaya will provide flexibility for importing countries to establish their own quarantine requirements and to make their own decisions on acceptable pesticide residues.

Continued registration of EDB for treatment of citrus and papaya for export, however, would be appropriate under FIFRA only if the benefits of that registration outweigh the risks to workers exposed to EDB from the treatment of exported fruit. EPA has carefully evaluated the occupational risks associated with continued registration for export and has determined that certain modifications in the terms and conditions of registration can reduce the occupational risks to an acceptable level in light of the benefits

Workers are exposed to EDB from fumigation of exported fruit at the site of application (the fumigation centers) and during any handling of the fruit prior to its export. Exported citrus represents an average of 80 percent of the citrus which was being treated with EDB prior to September 28, 1983. About 15–20 percent of the production of fresh papayas for sale outside Hawaii is exported to other nations. Consequently, potential occupational exposures will be reduced by 20 percent for citrus and by 80 percent for papaya by termination of EDB use on fruit for United States consumption. The Notice of Intent to Cancel, as amended, further prohibits EDB treatment of citrus exported in months other than October, November, December, and January, primarily because cold treatment has been proven satisfactory for the remaining portion of the growing/shipping season. This restriction reduces by about 70 percent the amount of exported citrus which could be treated with EDB. Information supplied to EPA by the citrus industry demonstrates that Florida dockside warehouse workdays in the 1981–1982 season included 517 person days in October–January and 1257 person days in February–May. The comparable figures for the 1982–1983 season were 1156 person days in October–January and 1339 person days in February–May.

In addition to reducing occupational exposure sharply through reductions in the volume of EDB treatment for post-harvest fumigation, the amended Notice of Intent to Cancel contains restrictions which will reduce occupational hazard in several other ways. By requiring application by certified applicators under governmental supervision and with full protective equipment, the Agency (1) is further reducing the potential that misuse or accident will create occupational hazards, and (2) is reducing the levels of routine exposure to protected persons, probably by more than 90 percent. Protective respirators are also required for persons directly exposed through contact with the fumigation chambers. Workers exposed because of conducting activities near the fumigation chambers during the ventilation of the chambers typically will receive additional protection from the requirement that ventilation stacks be raised to 30 feet above the roof line. Finally, trucks which transport fumigated fruit to warehouses or shipping docks must be aerated in transit to facilitate off-gassing, thereby reducing exposure to workers who unload the trucks or handle fruit in and around the warehouse area.

Workers who handle treated fruit after the fumigation operation is completed generally fall under the jurisdiction of the Occupational Safety and Health Administration (OSHA). Exposure to those workers is the subject of a Notice of Proposed Rulemaking published by OSHA on October 7, 1983 (48 FR 45956). OSHA has proposed that, for those places of employment which handle EDB-fumigated materials or commodities, the permissible exposure limit would be reduced from 20 parts per million of air to 0.1 part per million (8 hour time weighted average), with a short term exposure limit of 0.5 part per million. Requirements also would be imposed for exposure monitoring, methods of control, personal protective equipment and clothing, hygiene practices, medical surveillance, employee training and education, and restriction of dermal exposure to liquid EDB.

In sum, the substantial reduction in percentage of citrus and papaya treated with EDB together with the imposition of worker protection requirements will serve to reduce the risk to United States workers who are exposed to EDB from continued registration and use of EDB to treat exported citrus and papaya.

The Agency has also evaluated the economic effects of meeting the restrictive labelling required by EPA for continued registration of EDB for quarantine treatment of exported citrus fruits and papaya. The economic effects of these requirements will fall into four categories: (1) The cost of adopting alternative treatments for fresh citrus and papaya shipped interstate under quarantine; (2) the cost of adopting alternative quarantine treatments for exported citrus during February through September; (3) the cost of purchasing and maintaining self-contained breathing apparatus respirators approved by NIOSH or the Bureau of Mine Safety; and (4) the cost of increasing the height of fumigation chamber ventilation stacks to 30 feet above the chamber rooftops where necessary. Other restrictive labelling requirements are anticipated to be met with no significant increase in costs to fumigation chamber operators and/or fruit shippers.

The costs of adopting alternative quarantine treatments for interstate shipment of citrus and papaya fruit currently fumigated with EDB were identified in the Agency's March 2, 1984, Ethylene Dibromide Technical Support Document for Quarantine Fumigation Uses (U.S. Environmental Protection Agency, 1984). The substitution of methyl bromide for EDB as a post-harvest quarantine fumigant for citrus shipped interstate is expected to increase quarantine costs approximately $25,000 annually. The substitution of papaya double-dip heat treatments for EDB applications for domestically consumed papaya was expected to increase treatment costs of Hawaiian papaya approximately $40,000–$70,000 annually. However, more recent information indicates that the double-dip treatment is less costly than EDB fumigation, and therefore, adoption of this quarantine treatment may reduce costs to the Hawaiian papaya industry.

The restrictive labelling will allow EDB treatment of early-season citrus exported to Japan under quarantine. However, citrus (primarily grapefruit) shipped to Japan from Florida between the months of February and September likely will be cold-treated to meet quarantine standards. It is estimated that approximately 70 percent of the grapefruit exported to Japan under quarantine is shipped between February and September. It is estimated that the substitution of cold treatment for EDB treatments on this fruit will increase costs approximately $1,205,000–$1,919,000 annually.

The total increase in costs to the citrus and papaya industry of meeting quarantine requirements due to substitution of alternative techniques will range from approximately $1.2–$1.9 million annually dependent on the costs of alternative techniques.

In addition to increased costs due to adoption of new treatment methods (i.e., EDB alternatives), the costs of EDB treatments will also increase. The restrictive labelling requires that self-contained breathing apparatus respirators approved by NIOSH or the Bureau of Mine Safety be worn by individuals involved in EDB post-harvest fumigations. The cost of an ultra-light, self-contained breathing apparatus is approximately $1,100. Costs of charging air tanks is estimated at $15–$20 per tank. The number of respirators required and the tank recharge rate under the EDB restrictive labelling requirements have not been estimated.

The restrictive labelling also requires that ventilation stacks extend at least 30 feet from the rooftop of each fumigation chamber. Costs of increasing stack height, if required, for the various chambers throughout the United States (primarily Florida and Hawaii) have not been identified, but are not expected to be significant.

IV. Procedural Matters

This Notice announces the Administrator's amendment of the

September 28, 1983 Notice of Intent to Cancel Registrations of Pesticide Products Containing EDB. This action is taken pursuant to the authority granted by section 6(b) of FIFRA and by the Agency's procedural regulations (40 CFR 164.21(b)). This amendment is effective immediately, and only affects those registrations which have been preserved by requests for a hearing on the September 28 Cancellation Notice. Registrations for which there have been no requests for a hearing will be cancelled effective September 1, 1984, by the terms of the September 28 Notice.

This Notice of Amendment creates no new opportunity to request a hearing pursuant to section 6 of FIFRA. Section 6(b) provides adversely affected persons the right to request a hearing to challenge a notice of intent to cancel a registration of a pesticide product within 30 days. The Notice of Intent to Cancel the use of EDB as a quarantine fumigant was issued on September 28, 1983. This Notice of Amendment merely modifies the terms of the September 28 Notice to allow the continued registration of EDB as a quarantine fumigant of citrus and papaya for export and to require additional worker protection measures if EDB is still used for that purpose. Therefore, this Notice of Amendment is not a notice of intent to cancel nor can any person be adversely affected by this Notice under the terms of section 6 of FIFRA.

The registrant of the EDB quarantine fumigation product which is not already subject to a final order of cancellation may comply with the terms of the amended notice of cancellation by amending the registration to make the necessary corrections. The application for an amended registration, together with a copy of the amended labeling must be submitted by May 10, 1984 to:

William Miller, Product Manager (PM-16), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring material to: Room 211, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2600).

Parties to the EDB cancellation hearing (FIFRA Docket No. 503, et al.) are permitted as a matter of right to amend their objections to the September 28, 1983 Notice to reflect the terms of this Notice of Amendment. 40 CFR 164.22(c). Any amendments to objections should be filed within 30 days of the date of publication of this Notice with the Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Dated: April 3, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-9516 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL 2563-6]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on April 27, 1984, in Conference Room 3906-3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. and adjourn no later than 5:00 p.m.

The principal purpose of the meeting will be to review and comment on the scientific adequacy of the draft Health Assessment Document for Vinylidene Chloride, External Review Draft EPA-600/8-83-031A, dated October 1983, prepared by the Office of Health and Environmental Assessment of EPA's Office of Research and Development.

For information on how to obtain a copy of the draft document please contact: ORD Publications Office, Center for Environmental Research Information, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, telephone: (513) 684-7562. Requestors should be sure to cite the EPA number assigned to the document.

The agenda will also include discussion of suggested upcoming issues for Environmental Health Committee review, brief reports, and informational items of current interest to the Members.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact the Executive Secretary, Environmental Health Committee, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. April 20, 1984. Please ask for Mrs. Patti Howard or Mr. Ernst Linde. The telephone number is (202) 382-2552.

Dated: April 3, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-9515 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2561-8]

Discharges of Dredged or Fill Material Into Navigable Waters, State of Michigan; Public Hearing and Request for State Program Approval

The Federal Clean Water Act (33 U.S.C. 1251 et seq.; hereinafter the CWA) established the section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 404(g) of the CWA provides that the Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator of the USEPA a full and complete description of the program it proposes to establish and administer under State law, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program.

The Administrator is required to approve such submitted program unless the program does not meet the requirements of section 404(h) of the CWA. Among other authorities, the State must have: (1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under section 404(b)(1); (2) adequate authority, including civil and criminal penalties, to abate violations of the permit or the permit program; and (3) authority to ensure that the Administrator, the public, any other affected State, and other affected agencies, are given notice of each application for permit and are provided an opportunity for a public hearing before a ruling on each such application. The regulations establishing the requirements for the approval of State 404 Permit Programs were published in Volume 48, Number 64 of the **Federal**

Register, April 1, 1983 (40 CFR Part 233), beginning at page 14208.

The State of Michigan has submitted a full and complete Request for State Program Approval and proposes that the Michigan Department of Natural Resources Stevens T. Mason Building, Box 30028, Lansing, Michigan, 48909 (517–373–9244) operate the State 404 Permit Program for discharges of dredged or fill material into the navigable waters within the jurisdiction of the State in accordance with the CWA.

Valdas V. Adamkus, Regional Administrator of the USEPA, Region V, has scheduled a public hearing to consider this request and enable all interested parties to present their views on the State's submission. The hearing will be held in the Law Building Auditorium of the State Capitol Complex at Ottawa and Pine Streets in Lansing, Michigan on Thursday, May 10, 1984, from 1:00 PM until 5:30 PM and from 7:00 PM until 10:00 PM.

A three member hearing panel will hear the matter. The panel will consist of the Administrator of the USEPA or his representative, the Director of the Michigan Department of Natural Resources or his representative and the Regional Administrator of the USEPA, Region V, or his representative. Either the Administrator or the Regional Administrator or their respective representative will serve as the Presiding Officer. Oral statements will be heard and considered, but for the accuracy of the record, all testimony should be submitted in writing. Statements should summarize extensive written material so there will be time for all interested parties to be heard. Persons are encouraged to bring extra copies of their written statements for the use of the hearing panel and other interested persons.

The Presiding Officer may, at his or her discretion, exclude oral testimony if it is overly repetitious of previous testimony heard or if it is not relevant to the decision to approve or require revision to the State program as submitted. The hearing record will be left open for a period of 15 days following the hearing to allow any person to submit additional written statements or to present views or evidence tending to rebut testimony presented during the hearing.

Any interested person may comment upon the State submission by writing to the USEPA, Region V Office, Attention: Jeanette Morris (5WQD–11), 230 South Dearborn Street, Chicago, Ill. 60604. Such comments will be made available to the public for inspection and copying. All comments or objections received by May 25, 1984, or presented at the public hearing, will be considered by the USEPA before taking final action on the Michigan Request for State Program Approval.

The State's submission, related documents, and all comments received are on file and may be inspected and copied (at 20¢ per page) at the USEPA Region V Office in Chicago. In addition, copies of the complete submission are available for review at the Michigan Department of Natural Resources, Stevens T. Mason Building in Lansing, Michigan.

Copies of this notice are available upon request from the Water Division of USEPA Region V (312/886–6677).

Please bring the foregoing to the attention of persons you know would be interested.

Dated: April 3, 1984.

David G. Davis,

Acting Director, Office of Federal Activities, U.S. Environmental Protection Agency.

[FR Doc. 84–9391 Filed 4–9–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83–1230 (12–30–83; 48 FR 57620)]

International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes; Order

Adopted: March 29, 1984.
Released: March 30, 1984
By the Chief, Common Carrier Bureau.

1. On March 26, 1984, Omnicom, Inc., submitted a request for extension of the time for filing reply comments in the above-captioned proceeding from April 2, 1984 until May 2, 1984. In support of its request Omnicom notes that Study Group VII of the International Telephone and Telegraph Consultative Committee (CCITT) is meeting in Geneva, Switzerland, March 26–30, 1984, and that its experts attending that meeting will not be available to prepare comments for filing on April 2, 1984. Omnicom also notes that Recommendation X.121, which covers the Data Network Identification Code which is the subject of this proceeding, will be voted upon at that meeting of Study Group VII. The request is not opposed.

2. We believe that the petitioner has shown good cause for a grant of an extension. However, in the interests of expedition we will not grant the full requested extension.

3. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1984), that the time for filing reply comments in CC Docket No. 83–1230 is hereby extended until April 20, 1984.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84–9470 Filed 4–9–84; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1453]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 2, 1984.

Reconsideration of Staff denial of their petition for rule making and request for issuance of an order to show cause is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Assignments FM Broadcast Stations to substitute Channel 283 for Channel 284 at Charlotte, North Carolina.

Filed By: Rainer K. Kraus for Koteen & Naftalin, on behalf of E.Z. Communications, Inc. on 2–27–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–9469 Filed 4–9–84; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 2, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–4814.

Title: Section 73.1820
Action: Revision

Respondents: Businesses (including small businesses), nonprofit institutions
Estimated Annual Burden: 10,714 Recordkeepers; 4,071 Hours
Title: Section 74.537
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 150 Respondents; 600 Hours
Title: Section 74.551
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 100 Respondents; 100 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9468 Filed 4-9-84; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 2, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 232-7513. Persons wishing to comment on this information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Form No.: FCC 610-A/610-AL
Action: Revision
Respondents: Aliens with a valid amateur license issued by the country of which they are a citizen
Estimated Annual Burden: 1,660 Respondents; 137 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9473 Filed 9-4-84; 8:45 am]

BILLING CODE 6712-01-M

Subcommittee Meetings of the FCC Industry Advisory Committee on Technical Standards for Direct Broadcasting Satellite (DBS) Service

There will be a series of subcommittee meetings of the FCC Industry Advisory Committee on DBS Standards. These will be held on the dates indicated below:

S.C. on Transmission Standards: *April 25*, 1984; 1 to 3 PM CBS Network Inc.; third floor 1800 M Street, NW
S.C. Receiver Standards: *April 26*, 1984; @ 9:00; all day FCC/OST Conf. Room No. 7317 2025 M Street, NW
S.C. on Encryption Standards: *April 27*, 1984; @ 9:30 FCC/OST Conf. Room 7317 2025 M Street, NW

The various working groups under their respective subcommittees will present near-final drafts of their final reports. In addition, outline of the subcommittee report outlines will be discussed. Other matters will include approval of minutes of previous meetings, approval of the agenda, other business and dates of next meetings.

Those seeking further information may contact the chairmen of the above groups and/or B. Pattan, FCC/OST (202) 653-9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9467 Filed 4-9-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

North Carolina; Amendment to Notice of Major-Disaster Declaration

[FEMA-699-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of North Carolina (FEMA-699-DR), dated March 30, 1984, and related determinations.

DATED: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of North Carolina dated March 30, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1984: Gates, Lenoir, Nash and Perquimans Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9478 Filed 4-9-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-700-DR]

South Carolina; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of South Carolina (FEMA-700-DR), dated March 30, 1984, and related determinations.

DATED: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of South Carolina dated March 30, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1984: Chesterfield County for Individual Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9479 Filed 4-9-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-4175.

Title: City of Los Angeles and American President Lines, Inc., Sale and Assignment of Container Cranes.

Parties:

City of Los Angeles (City)

American President Lines (APL)

Synopsis: Agreement No. T-4175 provides for the sale and assignment of the City's right, title and interest in and to container cranes at the APL terminal in Los Angeles in accordance with the terms and conditions set forth in the Agreement.

Filing Party: Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Harbor Division, Post Office Box 51, San Pedro, California 90731-0151.

By Order of the Federal Maritime Commission.

Dated: April 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-9618 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 832]

Sopac Transport Corporation; Order of Revocation

On April 4, 1984, Sopac Transport Corporation, P.O. Box 520995, Miami, FL 33152, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 832.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is order, that Independent Ocean Freight Forwader License No. 832, be revoked effective April 4, 1984 without prejudice to reapplication for a license in the future.

It is further order, that a copy of this Order be published in the **Federal Register** and served upon Sopac Transport Corporation.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-9605 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2064]

Transeurope Shipping Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that not independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Transeurope Shipping Inc. was cancelled effective March 31, 1984.

By letter dated March 12, 1984, Transeurope Shipping Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2064 would be automatically revoked unless a valid surety bond was filed with the Commission.

Transeurope Shipping Inc. has failed to furnish a valid bond.

By virtue of authority vestes in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2064 be and is hereby revoked effective March 31, 1984.

It is ordered, that Independent Ocean Frieght Forwarder License No. 2064 issued to Transeurope Shipping Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Transeurope Shipping Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-9606 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application To Engage de Novo in Permissible Nonbanking Activities; BankAmerica Corp.

The company listed in this notice has filed an application under section 225.23(a)(1) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board Governors not later than May 1, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to engage *de novo* through its subsidiary BA Insurance Company, Inc., San Francisco, California, to expand the geographic scope in which it conducts the activity of underwriting, initially as reinsurer, to the extent permitted by relevant state or District law, for credit-related life insurance and credit-related accident

and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries. This activity will expand into Montana and the District of Columbia.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9460 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Mansfield Bankstock, Inc.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) 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 (49 FR 794) 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 outweight 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 May 2, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mansfield Bankstock, Inc.*, Mansfield, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Mansfield, Mansfield, Arkansas. Mansfield Bankstock, Inc., Mansfield, Arkansas, also proposes to engage in the activity of real estate appraisal.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9458 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Minnesota Assets Management Corporation, et al.

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 (49 FR 794) 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 May 2, 1984.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota Assets Management Corporation*, St. Louis Park, Minnesota; to acquire 94.1 percent of the voting shares of Summit State Bank of Richfield, Inc., Richfield, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Schmidt Bancshares, Inc.*, Marysville, Kansas; to acquire at least 20 percent of the voting shares of Berbanc, Inc., Gypsum, Kansas, and Gypsum Valley Bank, Gypsum, Kansas.

2. *Waynoka Bancshares, Inc.*, Waynoka, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of First State Bank, Waynoka, Oklahoma.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9459 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C. Appendix I), the calendar year 1983 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress: Immunization Practices Advisory Committee.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245-6791).

Dated: March 30, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84-9539 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-18-M

Childhood Lead Poisoning Prevention Advisory Committee; Establishment

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, the Centers for Disease Control announces the establishment by the Secretary of Health and Human Services, on March 29, 1984, of the following Federal advisory committee:

Designation: Childhood Lead Poisoning Prevention Advisory Committee

Purpose: This Committee shall provide advice and make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, and his staff on revisions to the policy statement dated April 1978, "Preventing Lead Poisoning in Young Children". The revised policy statement shall reflect new research findings since 1978.

Authority for this committee will expire March 28, 1985, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: April 3, 1984.

William C. Watson, Jr.,

Acting Director, CDC.

[FR Doc. 84-9464 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 84M-0091]

Ciba Vision Care; Premarket Approval of Cibasoft®, Cibathin®, Torisoft®, and Bi-Soft® (Tefilcon) Hydrophilic Contact Lenses With Cibatint™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™, sponsored by Ciba Vision Care, Atlanta, GA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and after listing, by regulation, the color additives for use in coloring the devices, FDA notified the sponsor that the application was approved because the devices had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 10, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 20, 1982, Ciba Vision Care, Atlanta, GA 30348, submitted to FDA an application for premarket approval of the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™. The lenses are tinted with one or more of four color additives to tint the lenses blue, green, aqua, or amber. The tinted CIBASOFT® and CIBATHIN® lenses range in powers from −25.00 diopters (D) to +25.00 D, and they are indicated for daily wear for the correction of visual acuity in persons with nondiseased eyes who are aphakic or not-aphakic and have astigmatism of 1.50 D or less. The tinted TORISOFT® lenses are indicated for daily wear for the correction of astigmatism of 0.50 D to 6.00 D in persons with nondiseased eyes who are aphakic or not-aphakic and require lens powers in the range from −25.00 D to +25.00 D. The tinted BI-SOFT® lenses are indicated for daily wear by not-aphakic presbyopic persons with nondiseased eyes who have no more than 1.50 D of astigmatism and require powers from −8.00 D to +8.00 D and add powers from 0.25 D to 4.00 D. The lenses may be disinfected using a heat or chemical lens care system. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On February 8, 1984, FDA approved the application by letter to the sponsor from the Acting Director of the Office of Device Evaluation of the Center for Devices and Radiological Health.

In the **Federal Register** of January 4, 1984 (49 FR 372), FDA published a final rule (21 CFR 73.3121) listing the color additives poly(hydroxyethyl methacrylate)-dye copolymers for use to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect. The use of these color additives in coloring the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™ conforms to the color additive listing requirements specified in 21 CFR 73.3121.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved draft labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The approved labeling for the contact lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses made of polymers other than PMMA. A sponsor

who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 10, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 4, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9475 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1368]

Privacy Act of 1974; Notice of a Matching Program

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of a Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974, and the Office of Management and Budget's Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982), the Department is issuing a public notice of its intent to conduct a computer matching program with the objective of obtaining salary and benefit attachments to discharge debts owed to the U.S. Government. The program will match debtors having Title I defaulted notes (Property Improvement and Manufactured (Mobile) Home Loans—Default, HUD/DEPT-28) against systems of records of current employees and retirees provided by the U.S. Postal Service (USPS) and the Office of Personnel Management (CPM).

EFFECTIVE DATE: Data exchange will begin in the first half of Calendar Year 1984, and, unless comments are received which will result in a contrary determination, will be accomplished at least once every six months thereafter.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone number (202) 755-6050. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department insures loans to finance improvements, alterations, and repairs of individual home and nonresidential structures and to facilitate the financing of manufactured (mobile) home purchases. Upon default, private lenders can assign a loan to the Department and collect on an insurance claim. The Department then attempts to locate each defaulted debtor and establish a repayment plan. To preserve the integrity of the U.S. Government, and to ensure the collection of debts owed to it, the Department desires to identify those current or former U.S. Government or Postal employees who are receiving remuneration from the Government while owing it money under the Title I Program. Below is the information required by paragraph 5.f.1 of the OMB supplemental guidance. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Issued at Washington, DC, March 29, 1984.

Judith L. Tardy,

Assistant Secretary for Administration.

Report of a Matching Program

a. *Authority:* The legal authority under which the computer match is being conducted is Title I, Sec. 2, National Housing Act, 12 U.S.C. 1703; the Federal Claims Collection Act of 1966 (Pub. L. 89-508), and the Debt Collection Act of 1982 (Pub. L. 97-365).

b. Program Description:

1. Purpose. The program will identify debtors with Title I defaulted loans who are Government or Postal employees or retirees, for the purpose of discharging debts owed the U.S. Government through salary and benefit offsets.

2. Procedure. After the Department has obtained matches, it intends to verify all debts. In each case involving a current or former employee of the U.S. Government or U.S. Postal Service who does not have a current repayment plan for a defaulted Title I note, the Department intends to arrange attachment of salary or benefit payments in order to discharge the debt if some other repayment plan cannot be arranged after first contacting the debtor.

C. *Records To Be Matched:* The program will match the Department's existing system of records, *HUD/DEPT 28, Property Improvement and Manufactured (Mobile) Home Loans—Default* (46 FR 56936, November 19, 1981) with systems of records provided by OPM and the U.S. Postal Service. The OPM systems of records to be used are the Central Personnel Data File contained in *OPM/GOVT-1, General Personnel Records* (48 FR 37124, August 16, 1983), and the Retirement Annuity Master file contained in *OPM/CENTRAL-1, Civil Service Retirement and Insurance Records* (48 FR 37120, August 16, 1983). The U.S. Postal Service system of records to be used is *USPS 050.020, Finance Records—Payroll System* (48 FR 55790, December 15, 1983).

d. *Period of Match:* The match program will begin in the first half of

Calendar Year 1984, and will be accomplished at least once every six months thereafter.

e. *Security Safeguards:* Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

f. *Disposition of Records:* Tapes received by the Department from other agencies will be returned to the source agencies within 48 hours of each match. Tapes produced by the Department will be maintained in a secured area in the custody of the Department until erased after a 60-day period. Reports produced as a result of the match will be disposed of in accordance with HUD Handbook 2225.6, Records Disposition Management.

[FR Doc. 84-9506 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-369]

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Amendments to existing Privacy Act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended by the Debt Collection Act of 1982, the Department is giving notice that it intends to amend four Privacy Act systems of records.

EFFECTIVE DATE: Amendments pertaining to disclosure of information to consumer reporting agencies are effective upon publication of this notice. Amendments concerning administrative and salary offset shall become effective without notice 30 calendar days from the publication date of this notice (May 10, 1984) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, (202) 755-6050. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Four systems of records are being amended to provide for compatible disclosures to other Federal agencies for the purpose of collecting debts owed the Federal government through administrative or salary offset. These system notices are also being amended to provide for disclosures to consumer reporting agencies to facilitate the collection of debts pursuant to the provisions of 5 U.S.C. 552a(b)(12) and the Debt Collection Act of 1982 (31 U.S.C. 3711(f)). The systems are: (1) HUD/DEPT-25, Legal Actions Files, published at 46 FR 54886; (2) HUD/DEPT-28, Property Improvement and Manufactured (Mobile) Home Loans-Delinquent/Default, published at 46 FR 54887 and previously amended at 46 FR 56936; (3) HUD/DEPT-32, Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program, published at 46 FR 54888 and amended at 48 FR 10757; and (4) HUD/CPD-1, Rehabilitation Loans-Delinquent/Default, published at 46 FR 54905.

The words "to other Federal agencies for the purpose of collecting debts owed the Federal government by administrative or salary offset" are added to the routine use section of each system description. Further, a new section entitled "Disclosures to Consumer Reporting Agencies" is added to each system description. The notices are published below in their entirety, as amended. The prefatory statement containing General Routine Uses applicable to most of the Department's systems of records was published at 46 FR 34322 (August 6, 1982). Appendix A, which lists the addresses of HUD's Field Offices, was published at 46 FR 34331 (August 6, 1982).

(5 U.S.C. 552a, 86 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C. March 29, 1984.

Judith L. Tardy,

Assistant Secretary.

HUD/DEPT-25

SYSTEM NAME:

Legal Actions Files.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Litigants; potential and past claimants against the government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Threatened, pending and past litigation involving HUD as a party; summons; writs; indictments; pleadings; decisions; legal memoranda; litigation reports; deposition; deficiencies on court judgments; notices of levy; settlement negotiations; legal rulings; claims against the government; employee claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 3533; 42 U.S.C. 3535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to Justice Department—information for purposes of litigation, and representation of HUD before the courts and performance of all legal work incident thereto; to HEW—for investigation and litigation; to IRS—for investigation, litigation and collection of levies; to Local Housing Authorities—for investigation and litigation; to local governments—for investigation and litigation; to parties to litigation—to provide status and facts in litigations; to private individuals and corporations—to assist co-defendants or to provide documents and information as required by the Federal Rules or Civil Procedure; various uses under the Freedom of Information Act; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

Name, case names; case numbers assigned by courts.

SAFEGUARDS:

Records maintained in locked and lockable metal file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Files are partly active and partly historical; disposal in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administrative Services Staff, Office of General Counsel, GA, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individuals concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by containing: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; financial institutions; firms and corporations; Federal government agencies; non-Federal government agencies; and Federal, state, and local courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), all investigatory material in the record which meets the criteria of these subsections is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the agency regulations in order for the Department's legal staff to perform its functions properly.

HUD/DEPT-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans—Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, credit applications, Social Security Number where available, case histories of borrowers; records of payment; financing statements; notes; mortgages and other evidences of indebtedness; delinquent and defaulted loan records and account cards; collection and field reports; records of claims and chargeoffs; creditor requests for collection assistance; justifications for closing collection action; related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Sec. 2, National Housing Act, 12 U.S.C. 1703; Federal Claims Collection Act of 1966 (Sec. 1, Pub. L. 89-506).

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims; FBI—investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offsetting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4; to financial institutions that originated or serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfactions, etc.; to bankruptcy courts—for filing of proofs of claim; to HUD Contractor—for debt servicing; to state motor vehicle agencies and Internal Revenue Service—to obtain current addresses of debtors; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Claim number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Files are partly active and partly historical and are disposed of in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Title I Insured Loans, HSI, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of

Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; current and previous employers; credit bureaus; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

HUD/DEPT-32

SYSTEM NAME:

Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A. Office of HUD TMAP contractor will maintain some records on TMAP cases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors with HUD/FHA insured single-family mortgages that are delinquent or in default; mortgagors seeking assistance to prevent foreclosures; and mortgagors whose mortgages are held by HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of delinquent mortgages; requests for forebearance or assignment; forebearance or assignment reviews include data on mortgage amount and payments made, employment and income, debts and expenses, reasons for delinquency, recommendations and actions on requests; credit reports; forebearance agreements; deeds of trust; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See 114(a), Housing Act of 1959, (Pub. L. 86-372), 12 U.S.C. 1702 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to FHA—for insurance investigations; to IRS and GAO—for investigations; to state banking agencies—to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on the status of cases and referrals of complaints; to counseling agencies—for counseling; to Legal Aid—to assist mortgagors; to HUD TMAP contractor—for processing TMAP; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

In file folders and on magnetic tapes, drums, and discs.

RETRIEVABILITY:

Name; case file number, property address.

SAFEGUARDS:

Records maintained in desks and lockable file cabinets; access to automated systems is by passwords and code identification cards; access limited to authorized personnel.

RETENTION AND DISPOSAL:

Obsolete records destroyed or shipped to Federal Records Center in compliance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Servicing Division, HSSI, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; other individuals; current or previous employers; credit bureaus; financial institutions; other corporations or firms; Federal Government agencies; non-federal government (including foreign, state and local) agencies; law enforcement agencies.

HUD/CDP-1

SYSTEM NAME:

Rehabilitation Loans-delinquent/Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Rehabilitation loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; credit applications; Social Security Number where available, loan and grant documents, including promissory note, mortgage, deed of trust, title evidence; HUD Section 312 forms and documents; statement of account; sales contract; assumption agreements; compromise agreements; subordination agreements; repayment agreements; collection history, including correspondence with borrower, servicer, and LPA; credit reports; financing statements; records of foreclosures; charge-offs; judgments on the note and deficiency judgments; creditor requests for collection assistance; insurance documents; bankruptcy records and documents; property appraisals; rehabilitation contracts; correspondence with the LPA's and related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. Sec. 1452b, Housing Act of 1964.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims; FBI—for

investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offsetting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection conistent with Federal Claims Collection Standards, 4 CFR Section 102.4; to financial institutions that serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfaction, etc.; to bankruptcy courts—for filing of proofs of claims; to local agencies that service HUD Section 312 (Rehabilitation) loans—to aid in the collection of delinquent loans, to counseling agencies—to provide counseling and assistance in the collection of delinquent Section 312 loans in accordance with HUD/DEPT-22; to state motor vehicle agencies and Internal Revenue Service—to obtain addresses of debtors; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Case file (Claim) number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are primarily active with some historical information; disposal is in accordance with HUD Handbook 2225.6, Appendix 66.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Rehabilitation Management Division, CRM, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned, appear in CFR Part 16. If additional information or assistance is needed, it may be obtained by containing: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; current and previous employers; credit bureaus; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

[FR Doc. 84-9507 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-84-1363]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposal forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program.

Office: Community Planning and Development.

Form No. SF-424 and Narrative.

Frequency of Submission: Annually.

Affected Public: State or Local Governments.

Estimated Burden Hours: 48,930.

Status: New.

Contact: Nancy Blauvelt, HUD, (202) 755-5970; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1984.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 84-9505 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1364]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (MB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20504.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. CHapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Insurance of Indexed Mortgages.

Office: Housing.

Form No. None.

Frequency of Submission: On Occasion.

Affected Public: Business or Other For-Profit and Small Businesses or Organizations.

Estimated Burden Hours: 1,001,400.

Status: Revision.

Contact: Joseph Emmi, HUD, (202) 426-7212; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 30, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 83-9508 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1365]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should referr to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement and Voucher for Basic Annual Contribution—Leased Housing.

Office: Public and Indian Housing.

Form No. HUD-52981.

Frequency of Submission: Annually.

Affected Public: State or Local Governments and Non-Profit Institutions.

Estimated Burden Hours: 389.

Status: Extension.

Contact: Robert Fisher, HUD, (202) 426-1872; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 25, 1984.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 84-9511 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1366]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requirements Associated with the Office of Interstate Land Sales Registration.
Office: Housing.
Form No.: None.
Frequency of Submission: On Occasion and Annualy.
Affected Public: Individuals or Households and Businesses or Other For-Profit.
Estimated Burden Hours: 48,502.
Status: Revision.
Contact: John L. Brady, HUD, (202) 755-6314; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 20, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-9510 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1367]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certificate of Eligibility for a Historic Preservation Loan
Office: Housing
Form Number: FH-1 (HP)
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Small Businesses or Organizations
Estimated Burden Hours: 50
Status: Extension
Contact: James L. Anderson, HUD, (202) 755-6880; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Electricity Data, Gas Data, and Water and Sewage Disposal Data
Office: Public and Indian Housing
Form Number: HUD-51466a, HUD-51466b, and HUD-51466c
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 48,000
Status: New
Contact: Charles Ashmore, HUD, (202) 755-6640; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-9509 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Hall Indian Reservation, Idaho; Ordinance Providing for the Introduction, Use and Distribution of Alcoholic Beverages

March 26, 1984.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. LWOR-84-S1 was duly adopted on January 6, 1984 by the Fort Hall Business Council. Ordinance No. LWOR-84-S1 relates to the application of the Federal Indian Liquor Laws within the areas of Indian country under the jurisdiction of the Shoshone-Bannock Tribes. The ordinance reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Shoshone-Bannock Tribal Alcoholic Beverage Control Ordinance

Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Adopted by the Business Council of the Shoshone-Bannock Tribes on January 6, 1984

[Ordinance LWOR-84-S1]

Whereas, the Shoshone-Bannock Tribes are organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended; and

Whereas, under its Constitution and By Laws, adopted on March 31, 1936, the Fort Hall Business Council is designated as the governing body of the Shoshone-Bannock Tribes of the Fort Hall Reservation; and

Whereas, the Business Council is authorized to protect the health, security and general welfare of the Shoshone-Bannock Tribes and to regulate all commerce inside the Fort Hall Indian Reservation to levy assessments or license fees upon all persons doing the business within the Fort Hall Indian Reservation pursuant to the Tribal Constitution; and

Whereas, 18 U.S.C. 1161 recognizes the authority of the Business Council to regulate transactions involving liquor in Indian country; and

Whereas, the regulation and control of the sale and distribution of alcoholic beverages is necessary for the protection of tribal members and others who are residents of the reservation; now

Therefore, be it enacted by the Business Council of the Shoshone-Bannock Tribes, that the following Tribal Alcoholic Beverage Control Ordinance is hereby adopted.

Authority for the foregoing ordinance is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended under Article VI, Section 1 (a, h, i, k, l and s) of the Constitution and By Laws of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

Dated this 6th day of January, 1984.

James Osborne,

Chairman, Fort Hall Business Council.

Certification

I hereby certify, that the foregoing ordinance was passed while a quorum of the Business Council was present by a vote of 4 in favor, 1 opposed, 1 absent, and 1 not voting on the date this bears.

Cathy Weiser,

Acting Secretary, Fort Hall Business Council.

Approved: January 20, 1984.

Duane F. Thompson,

Superintendent, Fort Hall Agency, Fort Hall, ID 83203.

Shoshone-Bannock Tribes Alocholic Beverage Control Ordinance

Whereas, the Fort Hall Business Council is the governing body of the Shoshone-Bannock Tribes of Idaho by authority of the Constitution and Bylaws of the tribes approved on April 30, 1936 by the Secretary of the Interior; and

Whereas, the Business Council is charged with the responsibility of promoting and protecting the health, security, safety, moral values, and general welfare of members of the Shoshone-Bannock Tribes and others residing within the boundaries of the Fort Hall Indian Reservation; and

Whereas, the Business Council is authorized to regulate commerce inside the reservation and to levy assessments or license fees upon persons doing business within the reservation pursuant to the tribe's Constitution; and

Whereas, Section 1161 of Title 18 of the United States Code also clearly recognizes the authority of the tribal government to regulate transactions involving alcoholic beverages within the reservation; and

Whereas, the regulation of all transactions involving the distribution, sale, use and possession of alcoholic beverages is necessary for the protection of the health, safety, and general welfare of all people residing at or passing through the reservation; and

Whereas, the public interest requires that traffic in alcoholic beverages be regulated and controlled by the Shoshone-Bannock Tribes through the governmental medium of the Tribal Alcoholic Beverage Control Commisson which shall be vested with authority to license the distribution, sale, use and possession of alcoholic beverages within the reservation;

Now, therefore, be it enacted by the business council of the Shoshone-Bannock tribes that the following ordinance is hereby adopted to fully control and regulate the sale, distribution, use and possession of alcoholic beverages within the Fort Hall Indian Reservation:

Section 1—General Provisions and Purposes

A. Title—The ordinance shall be known as the "Shoshone-Bannock Tribal Alcholic Beverage Control Ordinance."

B. Effective Date—This ordinance shall be effective upon publication in the **Federal Register** and certification by the Secretary of the Interior.

C. Declaration of Public Policy and Purpose—The introduction, distribution, sale, possession and consumption of alcholic beverages within "Indian Country" has historically been a matter of special concern to Indian tribes and the United States of America. The Shoshone-Bannock Tribes have deep-rooted feelings against liberal sale and consumption of alcoholic beverages within the Fort Hall Indian Reservation. The tribe's concern is due to the detrimental impact which alcohol misuse and abuse has caused to vital tribal interests. Despite these strong feelings the Business Council of the Shoshone-Bannock Tribes realizes that a total ban on alcoholic beverages within the reservation is ineffective and unrealistic in view of changing times and circumstances. Nevertheless, the Business Council recognizes a need for strict regulation and control over all transactions involving alcoholic beverages within the reservation because of many potential problems associated with unregulated and inadequately regulated distribution, sale, possession and consumption of alcoholic beverages. The Business Council believes that tribal control is necessary to protect the health, safety and welfare of tribal members and other persons residing on the reservation, and to address specific tribal concerns relating to alcohol use on the

reservation. The Business Council also believes that enactment of a tribal ordinance governing alcoholic beverages on the reservation will help provide revenue for the continued operation of tribal government and the delivery of vital tribal social services. Therefore, this ordinance is enacted for the protection of the health, safety, welfare, morals and peace of the people residing on the Fort Hall Indian Reservation, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is hereby declared to be the public policy that alcoholic beverages shall be regulated to the extent of prohibiting all traffic in alcoholic beverages, except as expressly authorized in this ordinance.

D. Jurisdictional Statement—This ordinance is enacted pursuant to the inherent governing power of the Shoshone-Bannock Tribes and under authority recognized by federal law, in accordance with provisions of the Constitution and By Laws of the Shoshone-Bannock Tribes. All persons, businesses, lands, transactions and activities either located on or occurring within the exterior boundaries of the Fort Hall Indian Reservation shall be subject to provisions of the ordinance.

E. Rescision of Prior Inconsistent Enactments—All prior enactments of the Business Council of the Shoshone-Bannock Tribes which are inconsistent with or contrary to provisions of this ordinance are hereby rescined.

Section 2—Definitions

A. Terms Defined—As used in this ordinance the following words shall have the following meanings unless the context clearly indicates otherwise.

(1) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances, including all dilutions and mixtures of such substances.

(2) "Alcoholic Beverage" or "Liquor" as used in this ordinance, includes

(a) "Alcohol" meaning the product of distillation of any fermented liquor, rectified either once or more, whatever may be the origin thereof, or synthetic ethyl alcohol;

(b) "Spirits" meaning any beverage which contains alcohol obtained by distillation mixed with drinking water and other substances in solution, including, among other things, brandy, rum, whiskey and gin;

(c) "Wine" meaning any alcoholic beverage obtained by the alcoholic fermentation of the natural sugar content of fruits or other agricultural products containing sugar, and which contains not more than fourteen percent (14%) of alcohol by volume;

(d) "Beer" meaning any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt, hops, and/or other ingredients in drinking water, containing not more than four percent (4%) of alcohol by volume;

(e) Any liquid or solid, patented or not, containing alcohol, spirits, wine or beer and susceptible of being consumed by human beings, for beverage purposes.

(3) "Application" shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(4) "Commission" means the "Shoshone-Bannock Tribes Alcoholic Beverage Control Commission" as constituted in this ordinance.

(5) "Council" or "Business Council" means the Business Council of the Shoshone-Bannock Tribes.

(6) "Election Days" means the general, primary and special elections as defined in §§ 34–101, 102 and 103 of the Idaho Code and all Shoshone-Bannock Tribal elections.

(7) "Indian" means a person who is either enrolled in a federally recognized Indian tribe, or who possesses one-fourth (¼) or more degree of Indian blood in a federally recognized tribe(s) and is identified in the community as being Indian.

(8) "Person" includes partnership, association, enterprise, company or corporation, as well as a natural person.

(9) "Premises" shall mean the area from which the licensee or permittee is authorized to sell, dispense, or serve alcoholic beverages under provisions of the license or special permit.

(10) "Reservation" means the Fort Hall Indian Reservation.

(11) "Sale" or "Sell" include exchange, barter, and traffic; and also include the selling, supplying or distributing, by any means whatsoever of liquor or alcoholic beverage.

(12) "Substantial Evidence shall mean that a reasonable mind might accept as adequate such evidence to support a conclusion.

(13) "Tribal Court" means the Shoshone-Bannock Tribal Court.

(14) "Tribes" means the Shoshone-Bannock Tribes.

B. Other Words—All other words and phrases used in this ordinance, the definiton of which is not herein given, shall be given the ordinary and commonly understood and accepted meaning.

Section 3—Tribal Alcoholic Beverage Control Commission

A. Creation of Alcoholic Beverage Control Commission—There is hereby created and established a Shoshone-Bannock Tribal Alcoholic Beverage Control Commission. The Commission shall be composed of three members and shall perform the duties specified in this ordinance.

B. Appointment—Members of the Commission shall be appointed by the Business Council of the Shoshone-Bannock Tribes.

C. Term of Office—Members of the Commission shall initially hold office for periods of one, two and three years, respectively: After the original terms of office have expired, each member shall hold office for three years. The Council may reappoint any member to an additional term or terms of office.

D. Removal from Office—A Commissioner may be removed prior to the normal expiration of his of her term by the Business Council only for good cause shown after notice and hearing by the Council. The Council's decision to remove a member of the Commission shall be final.

E. Vacancy and Interim Appointment—If a member of the Commission shall die, resign, be incapacitated or permanently leave the reservations, or be removed from office, a vacancy on the Commission shall be automatically created and the unexpired term shall be filled by appointment of the Business Council.

F. Chairman—A Chairman of the Commission shall be elected by the Commission on an annual basis. The Chairman shall preside at all formal and informal meetings of the Commission. The Chairman shall exercise only such powers as are delegated to him by the Commission, and such powers as are expressly set forth in this ordinance.

G. Powers and Duties—In addition to all specific powers and duties conferred upon it by other sections of this ordinance, the Commission, and its duly authorized representative, shall have the following powers and duties:

(1) To administer this ordinance by exercising general control, management and supervision of all alcoholic beverage sales, places of sale and sales outlets.

(2) To establish administrative procedures as are necessary to govern the operation of the Tribal Alcoholic Beverage Control Commission.

(3) To make, promulgate and publish such rules and regulations as the Commission may deem necessary for carrying out the provisions of this

ordinance and for the orderly and efficient administration hereof.

(4) To permit, license, inspect and regulate the sale, transportation, delivery, storage, importation and manufacture of alcoholic beverages within the boundaries of the Fort Hall Indian Reservation.

(5) To prescribe specific conditions and qualifications, consistent with the general requirements set forth in this ordinance, necessary for obtaining licenses and permits, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of licensees and permittees.

(6) To regulate the issuance, suspension and revocation of licenses and permits to sell, manufacture, handle or traffic in alcoholic beverages in accordance with specific provisions of this ordinance.

(7) To prescribe the kind, quality and character of alcoholic beverages which may be sold under any and all licenses and permits, including the quantity which may be sold at any one time or within a specified period of time.

(8) To collect license fees, taxes, fines and penalties which may be assessed by authority of the Commission or the Shoshone-Bannock Tribes relating to alcoholic beverage sales.

(9) To make at any time an examination of the premises of any licensee or special permit holder to determine whether the provisions of this ordinance, and any rules and regulations promulgated hereunder, are being complied with. This right of inspection shall include all financial records relating to purchase or sale of alcoholic beverages.

(10) To enforce rules and regulations adopted in furtherance of the purposes of this ordinance and the performance of its administrative functions.

(11) To sue in an appropriate court to enforce the provisions of this ordinance with the consent of the Business Council of the Shoshone-Bannock Tribes. The Commission shall not, without the express written consent of the Business Council, waive the Commission's or the Tribe's immunity from suit.

(12) To exercise all other powers which are necessary and reasonable in order to accomplish the purposes of this ordinance.

H. Meetings—The Commission shall meet on the first Tuesday of January, April, July, and October of each year, and at such other times as the Chairman may prescribe.

I. Method of Decision Making—The Commission shall attempt whenever possible to administer this ordinance and execute its powers hereunder by a consensus approach. If a consensus cannot be achieved, the affirmative vote of at least two members of the Commission shall control the decision or action of the Commission. The Chairman shall be entitled to vote on any decision or action.

J. Compensation of Commission Members—Compensation for members of the Commission shall be set by resolution of the Business Council.

K. Prohibited Conduct of Commission Members—Members of the Commission may not accept any gratuity related to their authorizing alcoholic beverage sales, and may not have a personal business interest in such sales on the reservation.

L. Liability of Commission Members—Commission members, and employees or agents of the Commission, shall not be liable for damage sustained by any person because of any act done in the performance of their respective duties under this ordinance.

M. Reporting Requirement—The Commission shall submit an annual written report and accounting to the Business Council regarding sales of alcoholic beverages on the reservation and the activities of the Commission and its financial status. The annual report shall be submitted to the Business Council by April 1 of each year and shall address activities of concern in the preceding calendar year. The Business Council may require the Commission to report more frequently if it deems necessary.

Section 4—Regular Licenses for Retail Sales

A. License Requirement—All sales and dispensing of alcoholic beverages within the Fort Hall Indian Reservation must be made pursuant to express authorization of the Shoshone-Bannock Tribes given in the form of a regular license or special permit issued by the Commission.

B. Commission Empowered to Issue Licenses—The Tribal Alcoholic Beverage Control Commission is hereby empowered and authorized to issue regular licesnes to qualified applicants, as herein provided, whereby the licensee shall be authorized to sell and dispense alcoholic beverages on a retail basis for on-premises consumption only, in accordance with rules and regulations promulgated by the Commission and the provisions of this ordinance.

C. Nature of License—A regular license shall be considered to be a personal privilege extended by the tribal government, subject to denial, revocation, or suspension for abuse. It shall not constitute property; nor shall it be subject to attachment and execution; nor shall it be alienable or assignable. Every regular license shall be issued in the name of the applicant and no person holding such license shall allow any other person to use the same.

D. License Fees for Regular Retail Sales—(1) Each person or business licensed for regular retail sales under the provisions of this section shall pay an annual license fee of $50 to the Commission, plus the amount specified below for each type of beverage to be sold:

(a) For beer—$50 per annum.

(b) For wine—$150 per annum.

(c) For liquor—$450 per annum.

(2) The fees set forth in (a), (b) and (c) of subsection (1) above shall be exclusive of each other and must be paid separately.

(3) License fees may be prorated by the Commission at its discretion when applicants request a license to be effective only during a part of a calendar year. However, once a license is issued there shall be no refund of the whole or part of the license fee for any reason.

E. License Fees in Addition to Other Tribal License Fees—License fees provided for in this and other sections of this ordinance are exclusive of and in addition to other kinds of license fees chargeable by the Shoshone-Bannock Tribes.

F. Standards and Conditions for Issuance of Licenses—(1) The number of regular licenses issued for retail sale of alcoholic beverages on the reservation shall not exceed one (1) license for each fifteen-hundred (1,500) of population of the Reservation, as established in the last preceding census, or any subsequent special census conducted by the United States Bureau of the Census or the Land Use Policy Commission of the Shoshone-Bannock Tribes. For purposes of this section, a retail license issued for at least one type of alcoholic beverage listed in Section 4 D(1) above shall preclude issuance of other regular retail licenses which exceed the population restriction even though the new applicant intends to sell different types of alcoholic beverages.

(2) A regular license shall not be issued for any premises in any neighborhood which is predominantly residential or within one thousand (1,000.00) feet of any public school, Indian religious ceremonial area, church or other place of religious worship, measured in a straight line to the nearest entrance to the licensed premises; provided, that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing came therein.

(3) It shall be unlawful for any licensee under this section to sell, keep for sale, dispense, give away, or otherwise dispose of any alcoholic beverage other than for on-premises consumption.

(4) Regular licenses shall be issued only to applicants who dispense alcoholic beverages in connection with a restaurant business, where such restaurant is deemed by the Commission to be the primary business operation.

(5) In addition to the above-listed standards and conditions, the Commission may impose other reasonable requirements through written rules and regulations designed to safeguard the health, safety and welfare of reservation residents.

G. Bond Requirement—The Commission shall be empowered to require applicants to post a reasonable cash bond or other appropriate security in order to assure compliance with tribal laws, rules and regulations. Such bond or security shall not exceed the amount of $1,000.00. Such bonds or other security shall be required at the discretion of the Commission.

H. Expiration of License—Every regular license issued by the Commission shall expire on December 31st of the year in which issued, unless an earlier expiration date is established by the Commission.

Section 5—Special Permits for Beer Sales and Consumption

A. Scope of Special Permit—A special beer permit may be issued by the Commission in connection with special activities occurring on the reservation in order to authorize sale and consumption of beer within a special area for a short period while the activity is taking place.

B. Nature of Special Permit—A special permit shall be of the same character as a regular license and may be restricted, denied, revoked or suspended under the same procedures as supply to regular license.

C. Permit Fee—The fee for a special beer permit shall be set by the Commission at its discretion for each separate and distinct activity. The amount of the permit fee shall depend upon such factors as the anticipated gross sales, number of persons involved in the activity, duration of the activity, type of activity, and potential for encountering law and order disturbances.

D. Conditions for Issuance—A special beer permit shall be issued under the following conditions:

(1) A special beer permit shall not be issued for an activity which takes place in predominantly a residential area or within one-thousand (1,000) feet of any public school, Indian religious ceremonial area, church or other place of religious worship, measured in a straight line to the nearest entrance to the licensed premises, unless expressly authorized by the Business Council.

(2) Prior to issuance of a special beer permit applicants will be required to give reasonable assurance that consumption of beer sold or dispensed at the activity will not take place outside of the designated activity area specified in the special permit.

(3) An applicant for a special beer permit shall be required to submit some form of reasonable assurance to the Commission that beer sold or dispensed at the subject activity will not cause law enforcement problems for tribal authorities.

(4) The Commission, at its discretion, may refuse to issue a special beer permit, or may refuse to issue a renewal thereof, it not satisfied with the integrity and good faith of the applicant.

(5) In addition to the above listed conditions, the Commission may impose other reasonable requirements through written rules and regulations designed to safeguard the health, safety and welfare of reservation residents.

E. Bond Requirement—The Commission may require a reasonable cash bond or other appropriate security to be posted prior to issuance of special beer permit in order to assure compliance with tribal laws, rules and regulations. Such bond or other security shall not exceed the amount of $1,000.00.

F. Permit Expiration—The date and time of expiration for each special beer permit shall be set by the Commission and shall be set forth on the face of each permit.

Section 6—Application Procedures for Licenses and Special Permits

A. Applicant Eligibility—No license or special permit shall be issued to:

(1) An individual who is not a citizen of the United States; or to a partnership unless all members thereof are citizens of the United States or to a corporation or association unless the same is organized under the laws of the Shoshone-Bannock Tribes or the laws of a state of the United States and unless the principal officers and the members of the governing board are citizens of the United States.

(2) Any person, or any one (1) of the members, officers, governing board of a business, corporation, or association, who has, within five (5) years prior to the date of making application, been convicted of any violation of the laws of the United States, or any Indian tribal government, or any state of the United States, or the resolutions or ordinances of any county or city of a state, relating to the importations, transportation, manufacture or sale of alcoholic beverages; or who was convicted, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within ten (10) years prior to the date of making application for any license or permit.

(3) A person who has been convicted of any crime or misdemeanor opposed to decency and morality.

(4) A person whose license or permit issued under this ordinance has been revoked, or who was associated in any manner whatsoever with the business affairs of a partnership, association or corporation whose license or permit has been revoked.

B. Filing of Application—Prior to the issuance of any license provided for herein, the applicant shall file with the Commission an application, in writing, signed by the applicant under oath, and attested to by a person authorized to administer oath, verifying the truth of the information and statements contained in the application. The full amount of the license fee, in the form of a money order or cashier check, must accompany the application at the time of filing.

C. Application Contents—In addition to setting forth the qualifications required by other provisions of this ordinance, the application must show:

(1) A detailed description of the premises for which a license or permit is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of all persons who will have any financial interest in any business to be carried on in or upon the licensed or permitted premises, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) If the premises to be licensed or permitted are not owned by the applicant, a certified copy of the lease by which the applicant will occupy the premises showing that the owner consents to the sale of alcoholic beverages on such premises.

(5) The name and addresses of the applicant, which shall include all members of a partnership or other business association, and the officers, board of directors or principal stockholders of a corporation.

(6) A copy of the articles of incorporation and by laws of any corporation, the articles of association and by law of any association, or the partnership agreement of any partnership.

(7) If during the period of any license or permit issued hereunder any change shall occur in any of the requirements of subparagraphs (c), (d), (e), or (f) of this section, the licensee or permittee shall forthwith make a verified report of such change to the Commission.

D. False Statements—If any false statement is made in any part of an application for a license or special permit, or in any report required to be filed, the applicant, or applicants, shall be deemed to have violated this ordinance and shall be subject to the penalties and sanctions set forth in this ordinance.

E. Investigation and Fact Finding—Upon receipt of an application for a license or special permit under this ordinance, accompanied by the necessary fee, the Commission, within sixty (60) days thereafter, shall cause to be made a thorough investigation. The Commission may require the applicant to provide relevant books and records relating to the business affairs of the applicant to be submitted to the Commission for examination as a condition precedent to issuing any license or permit. If the Commission shall determine that the contents of the application are true, that such applicant is qualified under provisions of this ordinance to receive a license or permit, that the subject premises are suitable for carrying on the business, and that all requirements of this ordinance and the rules and regulations promulgated by the Commission are met and complied with, including an optional public hearing process, a license or permit shall be issued; otherwise the application shall be denied and the fee, less the costs and expense of investigation, shall be returned to the applicant.

F. Public Hearing Procedures—The Commission may at its discretion conduct public hearings for purposes of ascertaining the views of the general public as to whether applications for a regular license or special permits shall be issued. Comments from the general public may be received either in the form of in person testimony or by written statement. The Commission shall be given notice of such public hearings at least 10 days in advance by publishing a notice in the Sho-Ban News or other local newspaper. The Commission shall give due consideration to the comments submitted at a public hearing, but shall be free to exercise its independent judgment as to whether a license or permit shall be issued.

G. Rendering of Decision—Within ninety (90) days after the date of filing of an application the Commission shall render a decision as to whether a license or permit shall be issued. The decision shall be set forth in writing and shall contain the factual findings upon which it is based. A copy of the Commission's decision shall be immediately sent by certified mail to the applicant.

H. Appeal Procedure—

(1) An applicant may appeal a decision of the Commission by filing a Notice of Appeal with the Commission within ten (10) days after receipt of notice of the Commission's decision. Upon receiving a Notice of Appeal the Commission shall tranfer a complete record of its administrative proceedings relating to the application to the Chairman of the Fort Hall Business Council. Within twenty (20) days after receiving the record from the Commission the Business Council shall fully consider the record and grant the applicant an opportunity to present oral and written arguments in support of his or her position. However, the Business Council shall consider only factual information contained in the record developed in the proceedings before the Commission. In reviewing the decision of the Commission the Business Council shall, after reviewing all the evidence presented before the Commission, uphold the Commission's decision if it finds tht the decision was supported by substantial evidence. If substantial evidence does not support the decision of the Commission, then the Business Council shall overrule the Commission and remand the matter to the Commission for appropriate action.

(2) In the event that either the applicant or the Commission is dissatisfied with the appeal decision of the Business Council, then the matter may be further appealed within twenty (20) days after the Business Council's decision to the Appellate Division of the Shoshone-Bannock Tribal Court. However, the jurisdiction of the tribal court shall be limited to questions of jurisdiction, interpretation of the ordinance provisions, fair procedure and substantial evidence as contrasted to a *de novo* considertion of all the facts and the substitution of its judgment for that of the Commission. In all other respects the Rules of Appellate Procedure of the tribal court shall govern.

Section 7—Revocation and Suspension of Licenses and Permits

A. Complaints and Investigations—The Commission may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee or permittee hereunder to determine whether there is compliance with the provisions of this Ordinance.

B. Grounds for Revocation and Suspension—If the Commission shall have reasonable cause to believe that any licensee or permittee has violated any of the provisions of this ordinance, or any of the rules or regulations of the Commission promulgated hereunder, it may, at its discretion, and in addition to other penalties and sanctions herein prescribed, revoke the license or permit of any such licensee or permittee or it may suspend the same for a period not to exceed six (6) months.

C. Notice and Hearing Requirement—Prior to issuing any order of revocation or suspension of a license or permit the Commission shall give reasonable notice to the licensee or permittee that such action is being considered by the Commission and it shall afford such licensee or permittee an opportunity for a fair hearing before the Commission as to whether a revocation or suspension is justified under the circumstances.

D. Rendering of Decision—The Commission shall render a decision based upon a "preponderance of the evidence" as the standard of proof. Only that evidence which is adduced at the fair hearing or which is incorporated in the official administrative record, shall be considered in rendering a decision. If the Commission decides to revoke or suspend any license or permit previously granted, it shall give such licensee or permittee, as the case may be, fifteen (15) days notice of its intended action in writing by certified mail addressed to the licensee or permittee at the address listed in the application on file with the Commission, stating generally the basis for its intended action.

E. Tribal Court Review—(1) Within fifteen (15) days of receiving a notice of revocation or suspension a licensee or permittee may institute a proceeding for injunctive relief in the Shoshone-Bannock Tribal Court to have the intended action of the Commission reviewed.

(2) If the tribal court in such proceedings determines that the licensee or permittee has violated the provisions of this ordance, said proceedings shall be dismissed.

(3) Pending a determination of said cause on the merits the tribal court may, based upon a showing of undue hardship to the licensee or permittee and upon posting a proper bond, stay the effective date of the intended action

of the Commission for such time as the tribal court may deem proper. If no stay is issued, or has expired, the Commission shall issue its order of revocation or suspension.

(4) If the tribal court shall determine that cause did not exist for the intended action of the Commission it shall issue a decreee accordingly and the Commission shall comply therewith.

(5) Under this section the tribal court's review shall be limited to consideration of jurisdiction, ordinance interpretation, fair procedure and evidence and the court shall not conduct a trial *de novo.* The court shall instead serve the function of determining whether the Commission abused the discretion delegated to it. In this regard the standard of review shall be whether the decision of the Commission is supported by substantial evidence.

(6) In all judicial proceedings under this section the Rules of Civil Procedure and General Rules of Court shall apply unless otherwise specified in this ordinance.

F. Restrictions After Revocation—The Commission shall notify all licensees and permittees of revocations and suspensions. Whenever a license or permit shall have been revoked or suspended the holder thereof shall forthwith deliver the same to the Commission. No license or permit shal be issued to a person whose license or permit has been revoked within a period of six (6) months from the date of revocation of his former license or permit.

G. Bond Option—In response to a violation of this ordance, the Commission or tribal court may as a condition precedent to a continuance of his license or permit, in any case where the licensee or permittee has not theretofore given bond, exact from him a bond, written by a surety company authorized to do business in Idaho, in the sum of $1,000.00, conditioned on the observance of the provisions of this ordinance and any regulations of the Commission promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the Shoshone-Bannock Tribes, and any recovery thereon shall be distributed in accordance with Section 15 hereof.

H. Automatic Revocation—Whenever a licensee or permittee has been found guilty of any crime in any jurisdiction in which the illegal handling of alcoholic beverage was involved, such conviction shall automatically operate to revoke the license or permit of such person and any and all privileges thereunder.

Section 8—Tribal Court Jurisdiction and Enforcement Procedure

Proceedings to enforce provisions of this ordinance, whether they be criminal or civil, shall be initiated by the filing of appropriate complaint in the Shoshone-Bannock Tribal Court. The interest of the Shoshone-Bannock Tribes and Tribal Alcoholic Beverage Control Commission shall be represented by the Tribal Prosecutor. Rules of the Tribal Court relating to criminal and civil proceedings shall govern the manner in which the judicial proceedings are conducted. However, judicial review of decisions of the Commission concerning issuance, revocation and suspension of licenses and permits shall be conducted strictly in accordance with the provisions of Sections 6 and 7 hereof.

Section 9—Criminal Penalties

A. Application Only to Indians—Indians, be they members or non-members of the Shoshone-Bannock Tribes, who commit a violation of any provision of this ordinance shall be subject to criminal prosecution and penalties set forth hereunder. However, nothing in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians.

B. Maximum Criminal Penalty—Any Indian adjudged to be in violation of any provision of this ordinance shall be subject to a criminal penalty not to exceed six-months in jail, or a five-hundred dollar fine, or both, for each separate violation.

Section 10—Civil Fines

Any person, whether Indian or non-Indian, adjudged to be in violation of this ordinance shall be subject to a civil fine of not more than five-hundred dollars ($500.00) for each such violation. Imposition of all such civil fines shall be under the jurisdiction of the Shoshone-Bannock Tribal Court. The tribal court may impose a civil fine only upon a petition filed by the Commission, represented by the tribal prosecutor, setting forth specific allegations amounting to a violation of the ordinance. Notice and hearing on such petition shall be provided in accordance with the Rules of Civil Procedure generally applicable in tribal court. The tribal court shall exercise discretion as to the appropriate fine amount, taking into account its seriousness and the threat it may pose to the general health and welfare of residents of the reservation. A decision of the tribal court may be appealed in accordance with Rules of Appellate Procedure applicable in tribal court.

Section 11—Abatement of Nuisance

A. Declaration of Nuisance—Any room, house, building, boat, vessel, vehicle, structure, or other place where an alcoholic beverage is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of alcoholic beverages, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

B. Institution of Action—The Commission, represented by the tribal prosecutor shall institute and maintain an action in the tribal court in the name of the tribes to abate and perpetually enjoin any nuisance declared under this section. The plaintiff shall not be required to give bond in the action, but restraining orders, temporary injunctions, and permanent injunctions may be granted the same as in other injunction proceedings, and upon final judgment against the defendant, the court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the court in the sum of not less than One-Thousand Dollars ($1,000.00), payable to the tribes and conditioned that alcoholic beverage will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of therein in violation of the provisions of this ordinance or of any other applicable tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this ordinance. If any conditions of the bond be violated, the whole amount may be recovered as a penalty for the use of the tribes. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

C. Abatement—In all cases where any person has been adjudged to be in violation of this ordinance or other tribal laws relating to the manufacture, importation, possession, distribution or sale of an alcoholic beverage, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building,

vehicle, structure, or place against which such action is brought is a public nuisance.

Section 12—Contraband-Seizure and Forfeiture

A. Contraband Defined—All alcoholic beverages within the reservation held, owned, or possessed by any person or business outlet operating in violation of this ordinance are hereby declared to be contraband and subject to forfeiture to the Shoshone-Bannock Tribes.

B. Application of Seizure—Upon proper application of official representatives of the Shoshone-Bannock Tribes and/or the Tribal Alcoholic Beverage Control Commission, a trial judge shall issue an order directing tribal law enforcement officers to seize contraband alcoholic beverages within the reservation and to deliver them to or hold them on behalf of the Commission.

C. Temporary Storage of Contraband—Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare and file an inventory list with the tribal court.

D. Tribal Court Hearing—Within two weeks following the seizure of the contraband a hearing shall be held in tribal court, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities. The interest of the tribes shall be represented at such hearing by the tribal prosecutor on behalf of the Commission.

E. Notice of Hearing—Adequate notice of the hearing shall be given to the person from whom the property was seized if known. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at some other public place. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

F. Forfeiture—If upon hearing the evidence warrants, or if no person appears as claimant, the tribal court shall thereupon enter judgment of forfeiture and the person adjudged to be in violation of this ordinance shall forfeit all right, title and interest in the items seized. The forfeited items shall be sold for the benefit of the Shoshone-Bannock Tribes and proceeds distributed in accordance with Section 15; provided, that the forfeited items shall not be sold to any person not entitled to possess them under applicable law.

Section 13—Exclusion From Reservation

In addition to other sanctions contained in this ordinance, tribal law enforcement officers shall be authorized to exclude violators of this ordinance from the Fort Hall Indian Reservation under procedures set forth in Chapter XV of the Law and Order Code of the Shoshone-Bannock Tribes.

Section 14—Prohibitions and Limitations Concerning Sale and Distribution of Alcoholic Beverages

A. Manufacture, Sale, Possession, Consumption and Transport—It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess, consume, or transport intoxicating liquor or alcoholic beverage within the exterior boundaries of the Fort Hall Indian Reservation except on the terms, conditions, limitations, and restrictions specified in this ordinance.

B. Unauthorized Purchase—It shall be a violation of this ordinance for any person to buy any alcoholic beverage from any person or business within the boundaries of the Fort Hall Indian Reservation other than at a business, outlet or location that has been properly authorized by the Commission.

C. Illegal Dispensing by Licensees and Permittees—It shall be unlawful for any licensee or permittee to sell, give away, dispense, vend, or deliver any alcoholic beverage in any manner or by any means, except upon licensed premises or within a permit area.

D. Nineteen Year Age Limitation—Except in the case of an alcoholic beverage given or permitted to be given to a person under the age of nineteen (19) years by his or her parent or guardian for medicinal purposes, or administered to him or her by his or her physician or dentist for medicinal purposes, no person under the age of nineteen (19) years shall consume, acquire, or have in his or her possession any alcoholic beverages, except when such beverage is being used in connection with religious services. No person shall give or otherwise supply an alcoholic beverage to any person under the age of nineteen (19) years nor shall he or she permit any person under the age of nineteen (19) years to consume an alcoholic beverage on his or her premises or on any premises under his or her control, except as allowed in this section. Any person violating this section shall be in violation of this ordinance.

E. Serving Persons Under Age—No licensee or permittee or his or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, any alcoholic beverage to any person under the age of nineteen (19).

F. Identification—Any one of the following which shows the person's current age and bears his signature and photograph shall be suitable for identification purposes, if valid:

(1) Liquor Control Authority Card of any State;

(2) Driver's license of any State or "Identification Card" issued by any State Department of Motor Vehicles;

(3) United States active duty military identification;

(4) Passport; and

(5) Tribal identification or enrollment card.

G. Misrepresentation of Age—Any person under the age of nineteen (19) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from a licensee or permittee shall be in violation of this ordinance.

H. Transfer of Identification—It shall be a violation of this ordinance for any person to transfer in any manner an identification of age to a person under the age of nineteen (19) years for the purpose of permitting such minor to obtain an alcoholic beverage.

I. Refusal to Present Identification—It shall be a violation of this Ordinance for any person to refuse to present identification indicating age, when requested by the tribal law enforcement officer when: (a) he or she shall possess, purchase, attempt to purchase or consume an alcoholic beverage; or (b) he or she is on a premises licensed to sell alcoholic beverages for consumption on the premises.

J. Authorized Areas for Under Age Persons—It shall not be unlawful for any person under the age of nineteen (19) years to enter or be:

(1) Upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of alcoholic beverages for consumption on the premises.

(2) In any building, a part or portions of which is used as a place of selling and consuming alcoholic beverages, provided such place is separate or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the age specified from entering.

(3) In any sports activity area or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed or permitted for the sale and consumption of alcoholic beverages on the premises.

K. Illegal Employment of Under Age Persons—It shall be a violation of this ordinance for any licensee or permittee or their agent(s) to employ a person under the age of nineteen (19) years to sell, dispense, or dispose alcoholic beverages.

L. Entering, Remaining and Loitering on Licensed Premises by Under Age Persons—No person under the age of nineteen (19) years shall enter, remain in or loiter in or about any place licensed for sale of alcoholic beverages for consumption on the premises; nor shall any licensee of such place, or person in charge thereof, permit or allow any person under the specified age to remain in or loiter in or about such place. Provided, however, it is lawful for persons who are musicians and singers, eighteen (18) years of age or older, to enter and to remain in any place while performing as employed musicians and singers. Provided further, that the foregoing shall not permit the sale of distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beveages.

M. Intoxication and Drunkeness—Any person who shall be intoxicated or drunk at any place, either public or private, within the reservation, shall be in violation of this ordinance.

N. Selling or Dispensing Alcohol to Intoxicated Persons—Any person who sells, gives, or dispenses any alcoholic beverages to another person who is intoxicated or apparently intoxicated shall be in violation of this ordinance.

O. Refusal to Sell—All vendors of alcoholic beverages within the reservation shall refuse to sell alcohol to persons under the following circumstances:

(1) When that person does not provide satisfactory proof that he is at least nineteen years of age;

(2) When that person is apparently intoxicated, or;

(3) When the Commission has determined that the particular person and/or his family is significantly and detrimentally affected by the abuse of alcohol.

P. Holidays and Hours of Sale— No alcoholic beverage shall be sold, offered for sale, or given away upon any licensed permises during the following hours:

(1) Sunday, Memorial Day, Thanksgiving and Christmas from 1 o'clock a.m. to 10 o'clock a.m. the following day;

(2) On any other day between 1 o'clock a.m. and 10 o'clock a.m.; and

(3) On any election day until after the time when the polls are closed. Provided, however, any patron present on the licensed premises after the sale of alcoholic beverages has stopped in accordance with the provisions above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverage aleady served.

Q. Intoxication and Use of Alcohol Restricted Near Sundance and Other Religious Ceremonies—It shall be a violation of this ordinance for any person to be in a state of intoxication or to sell, attempt to sell, solicit, consume, possess, acquire or transfer liquor within one-thousand (1,000) feet of a Sundance or other religious ceremonies.

R. Use of Alcohol for Religious Purposes—A minister, priest, rabbi or other recognized clergy shall have the privilege of serving wine for sacramental purposes within the reservation.

S. False Representations in Obtaining License or Permit—Any person who procures, or attempts to procure, a license or special permit under provisions of this ordinance by false or fraudulent representation, or under a false or fictitious name, shall be in violation of this ordinance.

Section 15—Distribution of Revenue

All fees collected from assessments made by the Commission for licenses, permits and penalties shall be transferred to the Financial Management Division of the tribes and shall be placed in a special account designated as the Liquor Fund. The Business Council shall have sole authority to authorize expenditures from the Liquor Fund through its regular budgeting process. The Business Council shall first distribute Liquor Fund money by appropriating such money as is necessary to properly administer the functions of the Tribal Liquor Control Commission. Thereafter, distribution of Liquor Fund money shall be made only for purposes of alcohol and drug rehabilitation and counseling, law enforcement, judicial administration, and education in such amount as the Business Council deems proper.

Section 16—Application of Federal Laws

Federal law currently prohibits the introduction of alcoholic beverages into Indian country (18 U.S.C. 1154), and expressly delegated to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. 1161). Persons involved in acts and transactions not authorized by this ordinance shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

Section 17—Applicability of Other Tribal Laws

Nothing contained in this ordinance shall be interpreted to circumvent the application of other tribal laws, such as in the area of zoning and land use regulation.

Section 18—Powers Reserved to Business Council

All powers relating to regulations and control over alcoholic beverages which are not expressly delegated to the Commission by this ordinance shall be retained by the Business Council. In addition, the Business Council expressly reserves authority to set the fiscal year budget of the Commission. The Commission shall also be subject to other general tribal administrative laws, procedures and practices adopted by the Business Council unless expressly exempted.

Section 19—Sovereign Immunity

A. Immunity Preserved—Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Shoshone-Bannock Tribes, except for the limited tribal court review provisions of Sections 6 and 7.

B. Method of Waiver—No Commissioner or employee of the Commission shall be authorized to waive immunity for the tribes. Waiver of sovereign immunity shall only be authorized by specific written resolution of the Business Council of the Shoshone-Bannock Tribes.

Section 20—Severability

Should any section, clause, sentence, or provision of this ordinance, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Business Council of the Shoshone-Bannock Tribes would have adopted the remainder of this ordinance, notwithstanding the invalidity of any such section, clause, sentence, or provision.

Section 21—Amendments

Amendments to the ordinance may be made only by the Business Council of the Shoshone-Bannock Tribes.

[FR Doc. 84-9617 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-02-M

Shakopee Mdewakanton Sioux Community; Resolution and Ordinance Providing for On-Sale Transactions of Intoxicating Beverages

March 26, 1984.

This Notice is published in accordnace with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 01-11-19-93 was duly adopted on September 21, 1983 by the Shakopee Mdewakanton Sioux Community General Council. The accompanying ordinance provides for on-sale liquor transactions. A previously enacted ordinance, published on March 3, 1983, 48 FR 9072, and providing for off-sale liquor transactions, remains in effect. The instant ordinance relates to the application of the Federal Indian Liquor laws within the areas of Indian country under the jurisdiction of the Shakopee Mdewakanton Indian Community. The ordinance reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Shakopee Mdewakanton Sioux Community Liquior Ordinance—On Sale

Section I—Definitions

A. "License" shall mean permission to operate an on-sale retail liquor outlet on the Shakopee Mdewakanton Sioux Reservation issued under the provisions of this ordinance.

B. "Vendor" shall mean a person holding a current valid license.

C. "Liquor Commissioner" shall mean a person appointed by the Shakopee Mdewakanton Sioux Community General Council to oversee liquor sales operations on the reservation, or land held in trust for reservation status.

Section II—Liquor Commissioner

A. The term of the Liquor Commissioner shall be two years from the date of his/her appointment.

B. The Liquor Commissioner must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

C. The Liquor Commissioner shall report at least monthly to the General Council of liquor sales operations within the reservation, shall promptly upon receipt remit any excise taxes, application or license fees collected to the Treasurer, and shall perform all other duties as set forth in this ordinance.

Section III—Licenses

There is hereby authorized to be issued a maximum of five (5) annual licenses to operate as on-sale vendors under the terms and conditions of this ordinance.

1. Licenses shall be for the term of one year or less, running from the date of issuance to December 31 of the calendar year of issuance.

2. A fee for issuance of a licensed shall be $1000.00 payable upon receipt of the license.

3. Application procedure.

a. An applicant for a license must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

b. The applicant shall complete an application form, as provided by the Liquior Commissioner, and shall submit it to him/her within 20 days after announcement that one or more licenses under this ordinance are available for issuance.

c. The applicant shall accompany his/her application with;

i. A non-refundable application fee of $10.00.

ii. Proof that the applicant's financial assests [sic] exceed his/her liabilities by an amount equal to or greater than $5000.00.

d. 20 days after announcement that one or more licenses are available the Liquor Commissioner shall declare the application period closed, shall promptly reject any incomplete application notifying the applicant at once, and shall proceed to evaluate the balance of the applications for the available licenses, according to the information contained therein and accompanying documents. He/she shall issue the available license(s) to the applicant(s) most qualified to operate as a vendor under the terms and conditions of this ordinance.

4. Upon receipt of a license hereunder, an applicant shall post a bond in an amount to be established by the liquor Commissioner annually, sufficient to ensure payment to the community of the projected annual excise tax.

Section IV—Excise Tax

A. There is hereby imposed an excise tax on the sale of each bottle or other container of liquor sold by a vendor in the amount of 5¢ a bottle, 5¢ a glass.

B. Each vendor must file, with the Liquor Commissioner, a complete report of sales during a month and remit the excise tax on such sales. Such report and remittance must be made no later than the 15th day of the month following that to which the report applies.

Section V—Operations under license.

A. The license issued hereunder shall authorize the vendor to operate an on-sale operation for the sale of liquor.

B. All vendors must conform their operations to those laws of the State of Minnesota relating to the sale or possession of intoxicating beverages or beer as indicated in Minnesota Statutes Annotated.

C. A vendor must keep complete and accurate records of inventory, sales, payrolls, taxes paid and withheld, and all other facets of business operations. The books and records maintained by each vendor operating under a license shall be open for inspection by the Liquor Commissioner at all times during normal business hours.

Section VI—Revocation or suspension of license.

A. The Liquor Commissioner may suspend a license issued under this ordinance for violation of any of the terms of this ordinance.

1. For failure to submit the report or remit the excise tax required by Section IV (B), or for refusal to permit inspection of books or records as required by Section V (C), such suspension shall cease upon compliance with the indicated section.

2. No suspension shall continue for more than ninety days, provided, however, that the Liquor Commissioner may make a recommendation at any time to the General Council that a license be revoked.

B. The General Council may revoke a license issued under this ordinance for violation of any of the terms of this ordinance.

1. Upon receiving a request, from the Liquor Commissioner or his/her assistant, to consider revocation of a license, the General Council shall schedule the matter for a hearing at a regular or special meeting of the General Council.

2. The General Council shall provide written notice at least 3 days in advance to the vendor that revocation of his/her licenses will be considered.

3. The General Council shall permit statements or testimony by any person wishing to give such at the revocation hearing.

4. The General Council may, by majority vote, revoke a license.

C. A [sic] on-sale liquor license will be immediately revoked if any sales are conducted a the Little Six Bingo Palace.

D. One prior license revocation shall not prevent a person, otherwise qualified, from applying for a subsequent license under Section III.

Two prior license revocations shall render a person ineligible from applying for subsequent licenses.

Accepted By:

Norman N. Crooks,

Chairman.

Darlene Matta,

Vice-Chairman.

Amy E. Stade

Secretary/Treasurer.

Resolution 01-11-19-93

Whereas, the Shakopee Mdewakanton Sioux General Council has the power under the Constitution of the Shakopee Mdewakanton Community to promulgate resolutions governing the conduct of business in the community, and

Whereas, the Shakopee Mdewakanton Sioux Community hereby desires the right for on-sale liquor to be conducted on the reservation, and

Whereas, Shakopee Mdewakanton Sioux Community wishes to further the economic enterprises and development by conducting on-sale liquor sales and businesses, and

Now therefore be it resolved, that the Shakopee Mdewakanton Sioux Community hereby wishes to submit an on-sale liquor ordinance to the appropriate agencies, and

Be it further resolved, that the Shakopee Mdewakanton Sioux Community authorizes the Chairman to sign any and all documents concerning on-sale liquor on the reservation.

Certification

This resolution was passed at a Special General Council meeting at which a quorum was present with the vote of 17 yes, 10 no, 2 abstentions held on September 21, 1983 at the Shakopee Mdewakanton Sioux Community Building.

Norman M. Crooks,

Chairman.

Darlene Matta,

Vice-Chairperson.

Amy E. Stade,

Secretary/Treasurer.

Bureau of Land Management

California: Realty Action—Redding Resource Area; Amendment to Realty Action of Public Land for Sale in Shasta County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action, Sale of Public Lands.

SUMMARY: The Notice of Realty Action, published in the **Federal Register**, Vol. 48, No. 185, on September 22, 1983, at page 43225, regarding the sale of public lands in Shasta County, California, is hereby amended.

The parcels of public land offered for sale at the appraised fair market value were generally rejected by the public. As a result, few parcels were sold. Therefore, sale of unsold parcels has been temporaily suspended, pending review and evaluation of the appraised fair market values.

Unsold parcels will be reoffered competitively by sealed bid only, at a later date. Thereafter, parcels identified for sale will be available over the counter, by sealed bid only, until August 23, 1985. Lot 31, Section 10, Township 32 North, Range 5 West, M.D.B.&M., was studied, but inadvertently omitted from the legal description published for Sale Parcel Number 24, serialized as Case Number CA 14270. The subject Lot 31 contains 0.47 acres, and is contiguous to the north bundary of Lot 3, Section 15, Township 32 North, Range 5 West, M.D.B.&M. We propose to sell Lot 31 by direct sale to the successful purchaser of Parcel Number 24.

All other conditions stated in the original Notice of Realty Action remain in effect.

DATE: No later than May 25, 1984. Interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246-5325.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 84-9650 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-40-M

New Mexico; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual 220.2.1 G, and subsequent redelegations under Secretarial Order 3071 to the Director, Minerals Management Service, and Secretarial Order 3087 to the Director, Bureau of Land Management, the following described lands are hereby deleted from the following Known Geothermal Resources Areas, effective February 1, 1984.

(31) New Mexico

New Mexico Principal Meridian

Baca Location No. 1 KGRA

T. 21 N., R. 3 E.,
- Sec. 33, lots 1, 2, NE¼NE¼, and W½NW¼;
- Sec. 34, lots 1, 2, 3, 4, N½N½;
- Sec. 35, lots 1, 2, 3, 4, N½N½;
- Sec. 26, lots 5, 6, 7, 8, N½N½.

T. 21 N., R. 4 E.,
- Sec. 25, E½, E½W½, NW¼NW¼, and SW¼SW¼;
- Sec. 26, N½NE¼;
- Sec. 28, W½E½, E½W½, E½W½, and SW¼SW¼;
- Sec. 29, NW¼, and W½SW¼;
- Sec. 30;
- Sec. 31, lots 1, 5, 6, 7, 18, 19, 20, and 21;
- Sec. 32, lots 1, 3, 4, 13, and 14;
- Sec. 33, lots 1, 2, 3, 4, 13, 14, 15, and 16;
- Sec. 36, lots 1, 2, 3, 4, 13, 14, 15, and 16.

(Rio Arriba County—4,065.23 acres)

Kilbourne Hole KGRA

T. 27 S., R. 1 W.,
- Secs. 43 10 inclusive;
- Secs. 17 to 21 inclusive;
- Secs. 27 to 31 inclusive;
- Secs. 33, 34, and 35.
- Sec. 1;
- Secs. 3 to 9 inclusive;
- Secs. 11 and 12;
- Secs. 17 to 20 inclusive.

(Dona Ana County—21,890.21 acres)

There being no lands remaining, Kilbourne Hole KGRA is now revoked.

Radium Springs KGRA

T. 21 S., R. 1 W.,
- Sec. 5, SW¼NE¼, S½NW¼, SW¼, and NW¼SE¼;
- Sec. 8;
- Sec. 9, lots 2, 3, 4, 6, 7, 8, SE¼SW¼ and SW¼SE¼;
- Sec. 17, N½, N½S½, S½SW¼, and SW¼SE¼;
- Sec. 20, SE¼NE¼, and NW¼.

(Dona Ana County—1,959.50 acres)

Socorro Peak KGRA

T. 3 S., R. 1 W.,
- Secs. 34 and 35.

T. 4 S., R. 1 W.,
- Secs. 3, 10, and 11.

(Socorro County—3,193.68 acres)

The area described aggregates 31,108.62 acres.

Dated: March 6, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 84-9597 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 24829]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Mayfair Minerals, Inc., and Harrison W. Pace petitioned for reinstatement of oil and gas lease NM 24829 covering the following described lands located in Guadalupe County, New Mexico:

T. 4 N., R. 19 E., NMPM,
Sec. 9: E½, NW¼.
Containing 480.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, June 1, 1983.

Dated: March 30, 1984.

Alvin D. Pack,

Acting State Director.

[FR Doc. 84-9596 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-FB-M

[CA 12436]

Realty Action; Exchange of Public Lands; Lassen and Modoc Counties, California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of California Realty Action, exchange of public lands in Lassen and Modoc Counties, California.

SUMMARY: This document corrects a proposed patent reservation in a Notice of Realty Action for an exchange (CA 12436), published on March 15, 1984 (49 FR 9781). In that notice, on 49 FR 9782, it was erroneouly stated that the patent would be subject to a right-of-way described as follows:

6. S4320, a right-of-way granted for road and highway purposes, to the Fish and Wildlife Service, U.S. Department of Interior, its successors or assigns, under R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976).

The proposed patent will not be subject to the above right-of-way. Instead, the patent will contain an additional reservation to the United States. This reservation should be inserted in the notice published on March 15, 1984, on 49 FR 9781, in the third column, after the third paragraph of text describing the reservation of ditches and canals. The additional patent reservation will be as follows:

There will also be reserved to the United States an appropriation under 44 LD 513, serial number S-4320, for access road purposes, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

DATES: The publication date of this correction will commence the 45 day comment period on this correction. Within that period, interested parties may submit comments to the District Manager.

ADDRESSES: Comments should be sent to the Susanville District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California, 96130.

Dated: March 29, 1984.

C. Rex Cleary,

District Manager

[FR Doc. 84-9595 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

National Earthquake Prediction Evaluation Council; Reestablishment

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A-63 (Revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary has determined that reestablishment of the National Earthquake Prediction Evaluation Council is necessary and is in the public interest.

The purpose of the committee is to advise the Director of the U.S. Geological Survey (USGS) whether and when to issue prediction or other information pertinent to the potential for a future significant earthquake.

The General Services Administration has concurred in the reestablishment of this advisory committee.

Further information regarding this reestablishment may be obtained from John R. Filson, Chief, Office of Earthquakes, Volcanoes and Engineering, Reston, Virginia 22092, (703) 860-6471.

Dated: April 2, 1984.

Dallas L. Peck,

Director.

[FR Doc. 84-9463 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Reclamation

[INT DES 84-19]

Combined Planning Report/Draft Supplemental Environmental Statement, Santa Margarita Project, California; Availability of Draft Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental statement for the proposed Santa Margarita Project, San Diego County, California.

This statement describes the environmental impacts resulting from the proposed construction of two dams and reservoirs on the Santa Margarita River in northern San Diego County, California. The project would supply supplemental irrigation and municipal and industrial water to the Fallbrook Public Utility District and supplemental municipal and industrial water to the Marine Corps Base at Camp Pendleton. In addition, the project would provide regulation of imported water, flood control, recreation, fishing, and wildlife mitigation. Development of the proposed project is contingent upon Administration and congressional consideration of the results of the planning study and environmental review process. Written comments may be submitted to the Regional Director (address below) on or before June 4, 1984.

In accordance with Bureau of Reclamation Planning Instruction 83-02, dated January 25, 1983, the statement is integrated with the planning report on the project. Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7622, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343-4991

Division of Management Support, General Service, Library Section, Code 950, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234-3007

Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, Nevada 89005, Telephone: (702) 293-8464

San Diego County Library Headquarters, 5555 Overland Avenue, San Diego, California 92123

San Diego Library, Ranchero Bernardo Branch, 16840 Bernardo Center Drive, San Diego, California 92128
San Diego County Library, Fallbrook Branch, 124 South Mission, Fallbrook, California 92028
San Diego County Library, Encinitas Branch, 540 Cornish Drive, Encinitas, California 92024
Oceanside Public Library, 614 Fourth Street, Oceanside, California 92054
Los Angeles County Library, 3200 West Temple Street, Los Angeles, California 90053
Escondido Public Library, Escondido, California 92025
Carlsbad Public Library, 1250 Elm Avenue, Carlsbad, California 92008.

Single copies of the draft statement may be obtained on request to the Commissioner of the Bureau of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: April 5, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-9483 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-09-M

Santa Margarita Project, San Diego County, Calif.; Public Hearings on Draft Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a supplemental draft statement for the Santa Margarita Project. This statement (INT DES 84-19 dated 4/5/84), filed with the Environmental Protection Agency, is available to the public as specified in the Notice of Availability.

The purpose of the proposed construction of two dams and reservoirs on the Santa Margarita River is to supply supplemental irrigation and municipal and industrial water to the Fallbrook Public Utility District and supplemental municipal and industrial water to the Marine Corps Base at Camp Pendleton. In addition, the project would provide regulation of imported water, flood control, recreation, fishing, and wildlife mitigation.

Public hearings to receive comments on the draft statement will be held in Oceanside, California, on May 17, 1984, at 1 p.m. and 7 p.m. in the City Council Chambers located at 321 North Nevada.

Oral statements at the hearings will be limited to 5 minutes or less. Speakers may not trade time to obtain a longer oral presentation; however, the presiding officer conducting the hearings may allow any speaker additional time for oral comment after all persons wishing to make comments have been heard.

Requests for scheduled presentations at the hearings will be accepted until 4 p.m., May 10, 1984. Speakers will be scheduled according to the time preference mentioned in their letters or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled at the end of the scheduled speakers. Nonscheduled speakers will be handled on a first-come, first-serve basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearings should contact the Office of Environment, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, Nevada 89005, telephone (702) 293-8464, and announce their intention to participate. Written comments from those unable to attend the hearings, or from those wishing to supplement their oral presentations, will be accepted until May 21, 1984. Written comments should be sent to the address above, and should specify that they are to be included in the hearing record.

Dated: April 5, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-9482 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-09-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 March 30, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 25, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Tempe, *Bankhead Highway (Tempe MRA)*, Rural Rd. to Hayden Rd.
Tempe, *Borden Milk Co. Creamery and Ice Factory (Tempe MRA)*, 1300-1360 E. Eight St.
Tempe, *Elias-Rodriguez House (Tempe MRA)*, 927 E. 8th St.
Tempe, *Elliott House (Tempe MRA)*, 1010 Maple Ave.
Tempe, *Gonzales-Martinez House (Tempe MRA)*, 320 W. First St.
Tempe, *Goodwin Building (Tempe MRA)*, 512-518 S. Mill Ave.
Tempe, *Green, Mary and Moses, House (Tempe MRA)*, W of Carver St.
Tempe, *Harrington-Birchett House (Tempe MRA)*, 202 E. 7th St.
Tempe, *Hayden, C. T., House (La Casa Vieja) (Tempe MRA)*, 3 W. 1st St.
Tempe, *Hiatt House (Tempe MRA)*, 1104 Ash Ave.
Tempe, *Johnson, Joseph E., House (Tempe MRA)*, 720 Mill Ave.
Tempe, *Kloss, Rev. Daniel, House (Tempe MRA)*, 202 E. 6th St.
Tempe, *Laird, Hugh, House (Tempe MRA)*, 821 S. Farmer
Tempe, *Main Building, Tempe Normal School (Tempe MRA)*, ASU campus
Tempe, *Miller Block (Farmers and Merchants Bank) (Tempe MRA)*, 418-422 Mill Ave.
Tempe, *Miranda, Jesus, Homestead (Tempe MRA)*, 1992 E. University.
Tempe, *Moeru, W. A., House (Tempe MRA)*, 850 Ash Ave.
Tempe, *Morrow-Hudson House (Tempe MRA)*, 1203 E. Alameda Dr.
Tempe, *Mullen, C. P., House (Tempe MRA)*, 918 Mill Ave.
Tempe, *Ollerton House (Tempe MRA)*, 1004 S. Mill Ave.
Tempe, *Openshaw, Samuel, House (Tempe MRA), 104 W. 6th St.*
Tempe, *President's House (Tempe MRA), ASU campus*
Tempe, *Redden, Byron, House (Tempe MRA)*, 948 Ash Ave.
Tempe, *Redden, Lowell, House (Tempe MRA)*, 333 Carver St.
Tempe, *Rohrig School (Tempe MRA)*, 2328 E. University Dr.
Tempe, *Sampson House (Tempe MRA)*, 109 W. 6th St.
Tempe, *Scudder, B. H., Rental House (Tempe MRA)*, 919 S. Maple Ave.
Tempe, *Steward House (Tempe MRA)*, 612 Maple St.
Tempe, *Tempe Beach Stadium (Tempe MRA)*, Ash at First St.
Tempe, *Tempe Concrete Arch Highway Bridge (Tempe MRA)*, Mill Ave. and Salt River.
Tempe, *Tempe Cotton Exchange Cotton Gin Seed Storage Building (Tempe MRA)*, 215 W. Seventh St.
Tempe, *Tempe Depot (Tempe MRA)*, 3rd St. and Railroad Ave.
Tempe, *Walker, Harry, House (Tempe MRA)*, 118 E. 7th St.
Tempe, *White, E. M., Dairy Barn (Tempe MRA)*, 1810 E. Apache

CONNECTICUT

Fairfield County

Wilton, *Marvin Tavern*, 405 Danbury Rd.

FLORIDA

Monroe County

Key West, *U.S. Naval Station*, Roughly Front, Whitehead, Eaton, and Caroline Sts.

MAINE

Knox County

Camden, *Stephen Taber (schooner)*, Camden Harbor

MISSISSIPPI

Madison County

Puckshunubbee-Haley Site.

NEW YORK

Westchester County

Tarrytown, *Washington Irving High School*, 18 N. Broadway

NORTH CAROLINA

Chatham County

Goldston, *Paschal-Womble House*, 421 Main St.

OREGON

Clatsop County

Kappa Vicinity, *Hlilusqahih Site (35 CL T37)*, N of Knappa

Svensen vicinity, *Indian Point Site (35 CL T34)*, E of Svensen

Multnomah County

Portland, *Vista Avenue Viaduct*, SW Vista Ave.

Portland, *West, Nathaniel, Buildings*, 711–727 SE Grand Ave.

TENNESSEE

Maury County

McCains, *A mis, Jonathan, House*, Covey Hollow Rd.

TEXAS

Galveston County

Galveston, *Building at 1921–1921 ½ Avenue D (Central Business District MRA)*, 1921–1921 ½ Ave.

Galveston, *Building at 1925–1927 Market Street (Central Business District MRA)*, 1925–1927 Market St.

Galveston, *City Hall (Central Business District MRA)*, 823 25th St.

Galveston, *City National Bank (Central Business District MRA)*, 2219 Ave. D.

Galveston, *Eiband's (Central Business District MRA)*, 2001 Central Plaza

Galveston, *First Evangelical Lutheran Church (Central Business District M R A), 2401 Ave. G.*

Galveston, *House at 2017 Avenue I (Central Business District MRA)*, 2017 Ave. I.

Galveston, *House at 2019 Avenue I (Central Business District MRA)*, 2019 Ave. I.

Galveston, *House at 2021 Avenue I (Central Business District MRA)*, 2021 Ave. I.

Galveston, *House at 2023 Avenue I (Central Business District MRA)*, 2023 Ave. I.

Galveston, *House at 2528 Postoffice St. (Central Business District MRA), 2528 Postoffice St.*

Galveston, *I.O.O.F. Lodge (Central Business District MRA)*, 505 20th St.

Galveston, *Jean Lafitte Hotel (Central Business District MRA)*, 2105 Ave. F.

Galveston, *Marschner Building (Central Business District MRA)*, 1914–1916 Mechanic St.

Galveston, *Model Laundry (Central Business District MRA)*, 513–523 25th St.

Galveston, *Moser House (Central Business District MRA)*, 509 19th St.

Galveston, *Pix Building (Central Business District MRA)*, 2128 Postoffice St.

Galveston, *Robinson Building (Central Business District MRA)*, 2009–2011 Postoffice St.

Galveston, *Rosenberg Library (Central Business District MRA)*, 2310 Sealy St.

Galveston, *Scottish Rite Cathedral (Central Business District M R A)*, 2128 Church St.

Galveston, *Shaw, M.W., Building (Central Business District MRA)*, 2427 Ave. D.

Galveston, *Star Drug Store (Central Business District MRA)*, 510 23rd St.

Galveston, *Texas Building (Central Business District MRA)*, 2200 Central Plaza

Galveston, *Texas Heroes Monument (Central Business District MRA)*, 25th and Broadway

Galveston, *U.S. National Bank (Central Business District MRA)*, 2201 Ave. D.

UTAH

Salt Lake County

Salt Lake City, *Fairbanks, J. Leo, House*, 1228 Bryan Ave.

Tooele County

Grantsville, *Rich, John T., House*, 275 W. Clark St.

Vernon, *Sharp, John C., House*, off UT 36

WEST VIRGINIA

Harrison County

Clarksburg, *Trinity Memorial Methodist Episcopal Church*, 420 Ben St.

[FR Doc. 84-9456 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 82-28]

Coleman Preston McCown, D.D.S., Rockville, Maryland; Rescheduling of Hearing

On March 16, 1984, notice was given at 49 FR 9969 of the scheduling of a hearing in this matter.

The date and the location of the hearing have been changed. Notice is hereby given that these proceedings will now be held on Tuesday, April 17, 1984, commencing at 10:00 a.m., in Courtroom No. 2, Federal Trade Commission, 2120 L Street, NW., Lower Level, Washington, D.C.

Dated: April 4, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-9599 Filed 4-9-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the Public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected,

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of

Management and Budget, Room 3208, NEOB, Washington, D.C. 209503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management

Guidelines for Reviewing State Methods of Administration Used to Ensure Equal Opportunity in JTPA Programs
One time
State or local governments
50 responses; 1,000 hours

Office of Civil Rights has been delegated responsibility within DOL for assuring nondiscrimination among recipients of DOL funds. These review guidelines enable OCR to determine whether a State's Methods of Administration give reasonable guarantee of equal opportunity in its JTPA programs and activities.

Employment and Training Administration

State Employment Security (SESA) Financial Reporting
ETA-RC74
Quarterly; Annually
State or local governments
265 responses; 2650 hours

The USDOL, ETA, requires State Employment Security Agencies (SESAs) to submit financial information regarding the administration of grants and agreements. The information collected will enable ETA and SESAs to meet their accountability responsibilities, and provides necessary data to budget, allocate, and manage SESA resources.

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Class Exemption 77-8]
Other
Businesses and other for profit; small businesses or organizations
4,623 responses; 771 hours

The class exemption exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance of annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, or other employee benefit plans which are parties in interest.

[Prohibited Transaction Class Exemption 82-63]
On occasion
Businesses and other for-profit
5,868 responses; 1,467 hours

The class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan.

[Prohibited Transaction Class Exemption 80-83]
Recordkeeping
Businesses or other for-profit
1 hour

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

[Prohibited Transaction Class Exemption 79-1 and Recapture Exemption]
Other
Businesses and other for-profit; small businesses or organizations
555,585 responses; 111,115 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

ERISA Exemption Procedure
On occasion
Businesses or other for-profit; non-profit institutions; small businesses or organizations
1,074 respondents; 28,029 hours

The ERISA Exemption Procedure provides guidance to the affected public regarding the procedures to be followed and the information to be supplied to the Department when requesting an exemption from the ERISA prohibited transaction provisions.

[Prohibited Transaction Class Exemption 81-6]
On occasion
Businesses and other for-profit
11,736 responses; 978 hours

The class exemption allows banks and registered broker-dealers to borrow securities that are assets of employee benefit plans.

[Prohibited Transaction Class Exemption 81-8]
Other
Businesses and other for-profit
29,340 responses; 4,890 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

EXTENSION

Employment and Training Administration

Job Corps Data Sheet
1205-0025; ETA 652
On occasion
State or local governments; non-profit institutions
100,000 responses; 50,000 hours; 1 form

This form is used to obtain information for screening and enrollment purposes and to determine eligibility for the Job Corps program.

Employment Standards Administration

Black Lung Program Provider Information and Determination Physician
Forms
1215-0137; CM-1168/CM-1169
On occasion
Small businesses or organizations
1,440 responses; 225 hours; 2 forms

This report requests identification information from providers of medical services to claimants under the Black Lung Benefits Act, as amended. The data is necessary to process payment of providers' bills.

Signed at Washington, D.C. this 5th day of April, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-9619 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-29-M
BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-14, 924]

Clark Equipment Co., Buchanan, Michigan; Affirmative Determination Regarding Application for Reconsideration

By an application dated March 12, 1984, the United Auto Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Elibility to Apply for worker Adjustment Assistance on behalf of former workers at the Clark Equipment Company, Buchanan, Michigan. The determination was published in the Federal Register on March 2, 1984 (49 FR 7885).

The application claims, among other things, that Clark's Buchanan plant not only shipped axles to Clark's Battle Creek plant but they also shipped axles to Clark's Benton Harbor plant whose workers were also certified for trade adjustment assistance, TA-W-14. 171.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of Department of Labor's prior decision. The applicaiton is therefore, granted.

Signed at Washington, D.C., this 2nd day of April 1984

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 84-9631 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Cooper Industries, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 26, 1984–March 30, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,020; Cooper Industries, Inc., Grand Haven, MI

TA–W–15,033; Universal Foundry Co., Oshkosh, WI

TA–W–15,076; Jackson Div., Hayes-Albion Corp., Jackson, MI

TA–W–15,052; Abex Corp., Denison Div., Delaware, OH

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–15,055; Weyerhaeuser Co., Columbia River Lumber Corp., Longview, WA

TA–W–15,032; Towmotor Corp., Mentor, OH

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA–W–15,057; Genstar Cement and Lime Co., San Andreas, CA

Aggregate U.S. imports of hydraulic cement did not increase during the period under investigation.

Affirmative Determinations

TA–W–15,053; Canton Drop Forge Co., Plant A, Canton OH

A certification was issued covering all workers separated on or after October 3, 1982 and before July 1, 1983.

TA–W–14,842; Paulsen Wire Rope Corp., Sunbury, PA

A certification was issued covering all workers separated on or after July 7, 1982.

TA–W–14,900; NAP Consumer Electronics Corp., Electronics Div., Jefferson City, TN

A certification was issued covering all workers separated on or after July 27, 1982 and before July 1, 1983.

TA–W–14,978; Interstate Drop Forge Co., Milwaukee, WI

A certification was issued covering all workers separated on or after August 31, 1982.

I hereby certify that the aforementioned determinations were issued during the period March 26, 1984–March 30, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 3, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-9620 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; East Coast Molding Operation, et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 30th day of March 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Dated received	Date of petition	Petition number	Articles produced
East Coast Molding Operation (Plastic & Leather Workers Union)	No. Brunswick, NJ	3/26/84	3/21/84	TA-W-15,277	Parts—toy, plastic, mold.
Ingersoll Rand Co. (IUE)	Painted Post, NY	3/23/84	3/19/84	TA-W-15,278	Compressors—air, t-40.
Inland Steel Coal Co., mine No. 25 (workers)	Nicktown, PA	3/20/84	3/14/84	TA-W-15,279	Coal—metallurgical.
International Shoe Co. (workers)	Salem, MO	3/23/84	3/19/84	TA-W-15,280	Shoes—women's, dress & casual.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Dated received	Date of petition	Petition number	Articles produced
Penn-Transformer Corp. (IBEW)	Wingate, PA	3/26/84	3/21/84	TA-W-15,281	Devices—magnetic.
Reilly Plating Co., Inc. (workers)	Nanticoke, PA	3/22/84	3/14/84	TA-W-15,282	Finishing—metal, transistors, components.
Reltoc Manufacturing Co. (ACTWU)	Forrest City, AR	3/26/84	3/22/84	TA-W-15,283	Slacks—men's.
Wilshire Fashions, Inc. (workers)	So. River, NJ	3/26/84	3/24/84	TA-W-15,284	Jackets, coats, suits—ladies.
White Packing Co. (workers)	No. Bergen, NJ	3/22/84	3/15/84	TA-W-15,285	Ham, bacon, hot salami, cold cuts, etc.
Foote Mineral Co. (company)	New Johnsville, TN	3/22/84	3/16/84	TA-W-15,286	Manganese, electrolytic.

[FR Doc. 84-9621 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-44C]

American Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

American Coal Co., Inc., P.O. Box 626, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 19 (I.D. No. 15-076321) located in Leslie County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety by a certified person on a weekly basis.

2. The return airways affected are numbers 4, 5 and 6 entries and breaks of the 001 section. Petitioner states that weekly examinations would expose miners to hazardous conditions because roof falls have occurred. These roof falls have not affected the mine's ventilation system and no escapeways travel through the affected entries. Rehabilitation of these areas would expose miners to extremely hazardous conditions, resulting in a diminution of safety.

3. As an alternate method, petitioner proposes to establish and maintain an air measuring station in the main return airway at the mouth of the first right entries off the mains. Tests for methane, and the velocity and direction of air flow will be made by a qualified person at least every seven days, and the results of these tests will be recorded in a date book or on a date board located at the measuring station.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9626 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-43-M

[Docket No. M-84-41-C]

Everidge & Nease Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Everidge & Nease Coal Co., Inc., Route 2, Box 763, Whitesburg, Kentucky 41858, has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 15-07044) located in Letcher County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9624 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-38-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns that requirement of 30 CFR 75.326 that intake and return aircourses be separated from belt haulage entries.

2. Conditions in the mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face.

3. On August 27, 1979, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage entries as intake aircourses to ventilate active working places (docket number M-76-692). Petitioner was granted a modification of the standard to isolate the belt entries which are used as intake entries from other intake and return entries with the use of continuous permanent-type stoppings.

4. Petitioner now proposes to contruct permanent-type stoppings of substantial, incombustible material, such as concrete, concrete blocks, cinder blocks, bricks or tile with mortared joints. The blocks may be stacked, providing the stoppings are plastered on both sides with a material having the same strength as that of mortared joints. In order to take advantage of technological advancements in stopping construction techniques and materials, petitioner proposes to construct permanent stoppings and other ventilation controls with other equivalent, incombustible material not specified above as may be approved in the mine's Ventilation Systems and Methane and Dust Control Plan.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9623 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-7-C]

John Behm Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

John Behm Coal Company, 37 Branch Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Castle-Cumber Tunnel (I.D. No. 36-05862) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a failsafe ground check circuit to monitor continuously the grounding circuit.

2. The mine generates 480-volt, 3-phase power with a diesel-powered generator, which energizes one 13 hp sump-pump and one 40 hp pump. The power conductors are 4/0 aluminum and the grounding conductor, which is continuous from the surface grounding electrodes to the underground electrical equipment, is 4/0 aluminum.

3. There are no personnel in the mine while electrical circuits are energized. There is no high voltage at the mine. There is no portable or mobile equipment in the mine.

4. Water is pumped from the mine before or after personnel are in the mine. Pump repairs are made by outside contractors and not at the mine. Since there are no personnel in the mine during pumping, there is no chance of personnel contacting the energized frames of mining machinery which might become energized through failure of the insulation of the power conductors.

5. As an alternate method, petitioner proposes that:

(a) No personnel will enter the mine while circuits are energized;

(b) The pumps, which are controlled from the surface, will be locked out at the disconnect switch by the mine superintendent before personnel enter the mine; and

(c) A warning sign of adequate size will be posted at the mine's entry.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9628 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-72-C]

North River Energy Co.; Petition for Modification of Application of Mandatory Safety Standard

North River Energy Company, P.O. Drawer 519, Berry, Alabama 35546 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Continuous miner sections are developed by driving five to nine entries, and room development and pillar extraction is practiced. Longwall sections are typically developed by driving three to five entry sections. Mine ventilation is provided by one intake air shaft, one intake air slope and one return air shaft. One fan, located above the return air shaft, is used to draw air through the mine. Ventilation is provided to the working sections by one or two intake entries, one (3 entry longwall development) or two return entries and one to three neutral entries which are separated from the intake and return aircourses by permanent stoppings. One of the neutral entries serves as a combination belt and track

entry. Track mounted equipment in this entry is operated by battery power or an electric trolley system.

3. Adverse roof conditions in the outby area of the aircourses have necessitated the installation of substantial amounts of additional supports consisting of timbers and cribbing. Adverse roof conditions in areas where rock falls have occurred have rendered complete removal of the falls impossible. These factors, together with the low seam height and the extended length of some aircourses, have resulted in considerable restrictions to normal air flow.

4. The belt-track entry is brushed to an average height of six feet and is developed 22 feet wide, and is relatively restriction free. As a result, intake air has a tendency to pull into the neutral entry. The belt-track entry is regularly traveled and inspected by mine personnel each coal producing shift.

5. As an alternate method, petitioner proposes to use the belt-track entries as intake aircourses. This will ensure positive ventilation of the belt and eliminate potential dead air areas or air reversals due to pressure changes. In addition, because of the increased area and lower restriction, additional velocity and volume of ventilation air will be provided at the working face and in the last open crosscut of working sections.

6. In support of the proposed alternate method, petitioner proposes that:

a. The belt entries will be separated from other intake and return entries with permanent-type stoppings and controls as approved by the District Manager in the mine's Ventilation System and Methane and Dust Control Plan;

b. The respirable dust concentrations in the belt entry will be within the requirements of applicable standards;

c. The belt entries will continue to be used as travelways, ensuring regular and frequent inspections by mine personnel;

d. An MSHA approved, or equivalent, carbon monoxide monitoring system will be installed in all belt entries used as intake aircourses. Low-level carbon monoxide monitors will be installed along the beltline at intervals not exceeding 3,000 feet to monitor the air on the beltline at least every 20 minutes. Location of the monitors will be submitted for approval in the mine's Ventilation System and Methane and Dust Control Plan;

e. A communication system will be installed which will transmit data from the carbon monoxide detectors to a central location either on the surface or underground where a responsible person, equipped with a mine phone or equivalent system, will be on duty at any time personnel are in the monitored area(s) of the mine;

f. Any time a monitor detects a concentration of 20 p.p.m. above the ambient level for the mine, an alert signal will be given at the central location. The communication system installed at the central location will be capable of identifying the activated detector signal and will have a map or schematic to identify the location of the signal;

g. When an alert signal is transmitted to the central station, the person on duty will immediately notify the mine foreman for that shift, who will investigate the cause of the activated signal. The alert signal will continue until the concentration of carbon monoxide falls below 20 p.p.m. above ambient;

h. The monitor located at or near each section loading point will give an audible alarm signal when it detects carbon monoxide concentration of 30 p.p.m. above ambient. When this alarm sounds, all miners in the affected section, except those necessary to correct the condition, will be withdrawn to the nearest communication station;

i. The carbon monoxide monitors will be visually checked once each working day and calibrated with a known concentration of carbon monoxide at least once each 30 days. The results of the daily and monthly checks will be recorded in a book for that purpose and made available for inspection by an authorized MSHA representative.

7. Petitioner further proposes that at any time the carbon monoxide monitoring system has been deenergized, for reasons such as power outages or maintenance, the belt conveyor be allowed to continue to operate, provided the entry or entries affected will be continuously partrolled and physically monitored by a qualified person with carbon monoxide detector tubes or equivalent means until the system returns to normal operation.

8. Petitioner states that the proposed alternate method will provide the same measure of protection to the miners affected as that afforded by this standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9622 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-55-C]

Powellton Co.; Petition for Modification of Application of Mandatory Safety Standard

Powellton Company, Box 8, Mallory, West Virginia 25634 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Preparation Plant (I.D. No. 46-02127) located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires anot over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified

prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9625 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-84-C)

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois; and its Vanderrick Mine (I.D. No. 12-01677) located in Vanderburgh County, Indiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas.

2. Petitioner seeks a modification of the standard to permit the use of mobile battery charging stations that are not housed in fireproof structures or areas. In support of this request, petitioner states that:

(a) The mobile stations are kept on the working section and vented directly to the return;

(b) Each time a belt extension is installed, the battery charger is moved so it will remain even with the end of the belt;

(c) A 20-pound fire extinguisher and 250 pounds of rockdust are stored at each station; and

(d) Both batteries and chargers are housed in metal enclosures.

3. Petitioner states that removing batteries from the scoop car for charging creates less of a hazard than charging on the scoop car because:

(a) Removal from the car eliminates the possibility of igniting hydraulic oil, grease or gear oil on the scoop car itself; and

(b) Batteries are removed and charged in the mobile station during working hours instead of charging during idle hours while batteries are on the scoop cars. With two batteries underground, one is charged during working hours while the other is being used. This allows for earlier fire detection because charging is done while the section is manned.

4. For these reasons, petitioner seeks a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Date: April 4, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9629 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-37-C]

Washington Irrigation & Development Company; Petition for Modification of Application of Mandatory Safety Standard

Washington Irrigation & Development Company, 1015 Big Hanaford Road, Centralia, Washington 98531 has filed a petition to modify the application of 30 CFR 77.1605(K) (berms or guards) to its Centralia Coal Mine (I.D. No. 45-00416) located in Lewis County, Washington. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. The haul roads are maintained nearly as smooth as blacktopped roads, and the road widths range up to 120 feet in many places.

3. As an alternate method, petitioner proposes that:

a. The speed of pickups will be limited to 45 mph; haulage and maintenance equipment will be limited to a maximum speed of 35 mph;

b. Unobstructed speed limit signs will be posted on the roadways;

c. Electric lights and/or flare pots will be used to warn drivers of the road width limits; and

d. The main haulage and permanent pit roads will be maintained at a minimum 80 foot running width.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9627 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-70-C]

Jewell Ridge Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Jewell Ridge Coal Corporation, P.O. Box 26, Jewell Ridge, Virginia 24622 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Seaboard No. 1 Mine (I.D. No. 44-02253) located in Tazewell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. The mine is ventilated by a single fan exhausting approximately 396,384 cubic feet of air per minute. The mine liberates 571,000 cubic feet of methane per 24 hours. Intake airways, return airways, and belt and track entries are separated by permanent stoppings.

Both belt and track haulage, in some locations, are in the same entry. The mine uses a split-type face ventilation system on the four sections. Line curtains are kept within 10 feet of the working face.

3. As an alternate method, petitioner proposes to use a carbon monoxide monitoring system in lieu of automatic fire warning devices.

4. In support of this request, petitioner proposes to install an automatic fire detection system on the underground belt conveyors, as follows:

a. Sensors will be installed that will give early warning automatically when a fire occurs in the belt entry and provide both audible and visual signals that permit rapid location of the fire;

b. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 p.p.m. above ambient;

c. The automatic fire detection system will, upon activation, provide an effective warning signal to a manned location on the surface where personnel have an assigned post of duty, and have telephone or equivalent communication with all persons who may be endangered. The automatic fire detection system will provide indentification of any activated sensor. In addition, the detector located at or near the section loading point will activate when carbon monoxide is detected and give a warning signal that may be heard on the working section. All persons, except those required to investigate and take appropriate action in the event of a fire in the belt entry, will be immediately withdrawn from the endangered area to a safe location;

d. The location of the sensors for the automatic fire detection system will be submitted to the District Manager for approval in the mine's Ventilation System and Methane and Dust Control Plan; and

e. Each carbon monoxide monitor will be visually examined at least once each 24 hours to ensure proper functioning. The units will be checked weekly for proper operation of the built-in safety features and other checks recommended by the manufacturer. At least every 30 calendar days, the monitors will be checked for operating accuracy with a known concentration of carbon monoxide and calibrated as necessary. A record will be kept of the weekly and 30-day checks and made available to all interested persons.

5. Petitioner further proposes that should the automatic fire detection system be affected by a power interruption or other malfunctions, that the belt conveyors continue to operate if a person qualified to make such test is stationed in the area to continuously monitor for carbon monoxide with a suitable instrument.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 4, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9630 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-35]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Shuttle Science Working Group.

DATE: April 25-27, 1984, 8:30 a.m. to 4:30 p.m. on the first two days, 8:30 a.m. to 12 noon on the third.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, 400 Maryland Avenue S.W., Room 5026 on the first day, Room 5092 on the second and third days.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Daniels, National Aeronautics and Space Administration, Code NI, Washington, DC 20546 (202/453-2975).

SUPPLEMENTARY INFORMATION: The Shuttle Science Working Group was established under the NASA Advisory Council for the purpose of addressing issues related to cost effective utilization of the Space Shuttle for scientific and engineering research. The overall goal of the Working Group is to assess the scientific and engineering needs and to investigate the NASA and industry plans for experiment accommodations on the Shuttle and Space Station. Recommendation for low cost, convenient, high flight frequency schemes will be made to the council and to NASA. The working Group is chaired by Dr. John E. Naugle and is composed of 15 other members.

The meetings will be open to the public at the locations indicated by time and date up to the seating capacity of the designated rooms (approximately 25-30 persons, including the committee members and invited meeting participants).

Type of Meeting: Open.

Agenda:

April 25, 1984

8:30 a.m.—Introductory Discussions and Planning.
9:30 a.m.—Presentation and Discussion of Trends in Commercial Support for Shuttle Payload Integration.
12 noon—Lunch.
1 p.m.—Continuation of Commercial Support Discussions.
4.30 p.m.—Adjourn.

April 26, 1984

8:30 a.m.—Presentation and Discussion of Office of Space Science and Applications Trend in Shuttle Useage.
10 a.m.—Formulation of Working Group Findings, Recommendations and Resolutions.
11:30 a.m.—Lunch.
1 p.m.—Continued Development of Findings, Recommendations and Resolutions.
4:30 p.m.—Adjourn.

April 27, 1984

8:30 a.m.—Continued Development of Findings, Recommendations and Resolutions.
11 a.m.—Closing Discussions.
12 noon—Adjourn.

Dated: April 4, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-9461 Filed 4-9-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Advancement Section) to the National Council on the Arts will be held on April 26–27, 1984, from 9:00 a.m.–5:30 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–9610 Filed 4–9–84; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 25, 1984, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–9609 Filed 4–9–84; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photography Fellowships Section) to the National Council on the Arts will be held on April 23–27, 1984, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–9608 Filed 4–9–84; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–328, Construction Permit No. CPPR–141, EA 83–30, EA 83–130]

Arizona Public Service Co., Palo Verde Nuclear Generating Station Unit No. 1; Order Imposing a Civil Monetary Penalty

I

Arizona Public Service Company, P.O. Box 21666, Phoenix, Arizona 85036 (the "Licensee"), is the holder of Construction Permit CPPR–141 issued by the Nuclear Regulatory Commission ("NRC" or the "Commission"). The Construction Permit authorizes construction of the Palo Verde Nuclear Generating Station facility in Maricopa County, Arizona. The Construction Permit was issued on May 25, 1976, and is due to expire on December 31, 1984.

II

A special inspection of the licensee's activities under the Construction Permit was conducted at the Palo Verde plant by an NRC special inspection team during the period of September 6–November 1, 1983. As a result of the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 12, 1983. The Notice stated the nature of the violations, the provision of the NRC regulations violated, and the amount of the civil penalties proposed for each of the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties in a letter dated January 31, 1984.

III

Upon consideration of the licensee's reply to the Notice of Violation and arguments for mitigation of the proposed civil penalty, the Director of the Office of Inspection and Enforcement, for the reasons set forth in the Appendix to this Order, has determined that the penalty proposed for the violation identified in paragraph I.A. in the Notice of Violation and Proposed Imposition of Civil Penalties should be mitigated by 50% based upon the licensee's prompt and extensive corrective action. The violation identified in Paragraph I.B. of said Notice shall be the subject of future action as requested by the licensee.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act

of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars ($20,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings; if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considerd at such hearing shall be:

(a) Whether the licensee violated Appendix B requirements as set forth in paragraph I.A. of the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 3rd day of April 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's January 31, 1984 response to NRC's Notice of Violation and Proposed Imposition of Civil Penalties dated December 12, 1984, the licensee admits that: (1) The discrepant conditions identified in the four examples cited in Section I.A. did exist in September 1983, (2) there was no documentation or records of such discrepant conditions, and (3) such conditions were identified by the NRC Construction Assessment Team. Nevertheless, the licensee denies that the discrepant conditions constitute a violation of NRC requirements and protests the imposition of civil penalties, and if such is disallowed, requests remission or mitigation of the civil penalty proposed by the notice. A statement of the violation, a summary of the licensee's response, and NRC's evaluation and conclusions are presented as follows:

Statement of Violation

I.A. 10 CFR Part 50, Appendix B, Criterion II, as implemented by Chapter 17 of the licensee's PSAR and FSAR, requires in part that: "The quality assurance program shall provide control over activities affecting the quality of the identified structures, systems, and components, to an extent consistent with their importance to safety."

Contrary to the above requirements, the licensee's quality assurance program did not maintain adequate control over activities affecting quality as evidenced by the following examples:

1. On September 10, 1983, it was determined that the containment pressure instrumentation was incapable of performing its intended safety function in that caps had been installed on the sensing lines. Construction of the containment and pressure sensing systems had been completed, turned over from the constructor to the licensee, and tested. Subsequently, the quality assurance organization directed that the caps be installed without following established QA procedures for correcting potential deficiencies. No administrative requirement existed to assure that the caps would have been discovered until the next scheduled containment leak rate test, pursuant to the operating license requirements. This containment pressure instrumentation is required to automatically initiate the HPSI and other safety systems on high containment pressure.

2. On September 7, 1983, the manual operator for valve SI V470 on the suction of the HPSI "A" pump was disconnected and resting on the sprinkler system piping. Construction of the subsystem had been completed, turned over to the licensee, and was undergoing preoperational testing. There was no record of the defective and/or nonconforming condition which included a missing stud nut and leaking flange.

3. On September 28, 1983, the position indicator for valve SI V402 on the suction of the HPSI "B" pump was positioned so that the valve could only be opened 30 to 35 percent of its full open position.

Construction of this subsystem had been completed, turned over to the licensee, and was undergoing preoperational testing. There was no record of the defective and/or nonconforming condition.

4. On September 14, 1983, 87 ⅜-inch bolts were missing from the base frames for six motor control centers (MCC) of the vital AC onsite power distribution system. These bolts are necessary to ensure the structural integrity of the MCCs.

This is a Severity Level III Violation, (Supplement II). (Civil Penalty—$40,000)

Summary of Licensee Response

I.A.1 *Containment Pressure Sensing Line Caps.* The licensee admits to the conditions of the sensing line caps, states some preoperational tests had been done, and states that the caps were installed by direction of QA but not documented. The licensee also states that the system had not been turned over to operations. The licensee further states there was no regulatory requirement to document the installation of the caps and that the required action in response to IE Notice 84–23 would have assured cap removal.

I.A.2 *Manual Operator Disconnected, and Missing Stud Nut with Leaking Flange.* The licensee admits to the conditions found, but states preoperational testing was not complete, the valve had not been accepted by operations and that further preoperational testing would have discovered the problems. The licensee further states, that the as found condition of the valve would have had no impact on the safe operation of the system. The licensee further states the valve was improperly reassembled after turnover to the startup organization.

I.A.3 *Improper Installation of a Position Indicator Limited Valve Travel.* The licensee admits to the conditions found, but states the valve had not been accepted by operations, preoperational testing was not complete, and no uncontrolled work had been performed on the valve. The licensee also states the as-found condition would have had no impact on the safe operation of the system. The licensee further stated the valve had been stroked by APS operators and the valve was assumed to be full open.

I.A.4 *Missing Bolts.* The licensee admits that any bolts necessary for structural integrity are missing from the MCCs. However, the licensee states that the vendor installation drawings indicate that a portion of the eighty-seven identified missing bolts should have been installed but subsequent analysis showed that they were not essential for the structural integrity of the MCCs.

NRC Evaluation

As stated in the introduction of 10 CFR Part 50, Appendix B, the NRC quality assurance requirements apply to all activities affecting the safety-related functions of structures, systems and components in nuclear power plants that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling and modifying.

In addition, as stated in Criterion I of 10 CFR Part 50, Appendix B, safety-related activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (a) assuring that an appropriate quality assurance program is established and effectively executed and (b) verifying, such as by checking, auditing, and inspection, that activities affecting safety-related functions have been correctly performed.

Although strictly speaking, failure to properly perform a work function is a violation of the NRC quality assurance criteria (Criterion V), the NRC's Enforcement Policy (10 CFR Part 2, Appendix C) provides that Notices of Violation will not be issued for a particular violation when the defective condition is identified; is of a Severity Level IV or V; is reported, if required; is corrected within a reasonable time; and is not a violation that could reasonably be expected to have been prevented by a previous corrective action.

In essence the NRC quality assurance criteria require that all safety-related work be performed pursuant to approved instructions, procedures or drawings and verified, as appropriate, by inspection, checking, testing or auditing.

As admitted in the licensee's response, summarized above, the identified discrepant conditions occurred as a result of individuals performing work or otherwise doing an act or not doing an act that should have been done that affects safety-related structures, systems and components without the use of and contrary to approved instructions, procedures and drawings. As discussed above, all work on safety-related items must be controlled subsequent to initial installations and inspection to assure that the original quality of the items are not degraded and that any modifications are appropriately reviewed and approved as provided for in the NRC quality assurance criteria.

The licensee's contention that each of the items when viewed singularly should not represent a significant safety concern on the part of the NRC and, therefore, its inference that the cumulative aspects of the items are also insignificant does not have merit. Discrepant conditions were found by the NRC inspection staff in three vital safety-related systems (containment, emergency core cooling, and electrical) that should have been prevented and/or identified by the licensee had the licensee's quality assurance program been functioning as required by the NRC requirements. A malfunctioning quality assurance program is significant to safety and must be corrected. In view of the foregoing the NRC viewed the conditions as cause for significant concern in that the circumstances surrounding the conditions evidenced a breakdown in the quality assurance program amounting to more than isolated instances. Therefore, the cited violation was properly categorized a Severity Level III.

Request for Remission or Mitigation

In Attachment E of the licensee's response, the licensee protests the imposition of a civil penalty, and if disallowed, requests remission or mitigation of the civil penalty proposed by the Notice. The licensee has not provided adequate reasons for disallowing or remitting the civil penalty; however, mitigation of the civil penalty for actions taken by the licensee was reviewed and considered appropriate. The corrective action taken which includes, among other actions, initiation of an independent assessment immediately following the special team inspection, suspension of startup work taken on the licensee's own initiative, reorganization of the management structure, and the direct involvement of the most senior corporate management was found to be unusually prompt and extensive. Therefore, mitigation of the penalty in the amount of 50% is allowed.

Conclusion

The violation identified in Section I.A. of the Notice of Violation and proposed Imposition of Civil Penalties did occur as originally stated. However, as discussed above, the civil penalty has been mitigated 50% based upon the licensee's prompt and extensive corrective action.

[FR Doc. 84-9535 Filed 4-9-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on May 2, 1984, Room 1046, 1717 H Street, NW., Washington, D.C.

In accordance with the procedures outlined in the Federal Register on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only be members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necesary to discuss proprietary information. One or more closed sessions may be necesary to discuss such information (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the pubic in attendance.

The agenda for subject meeting shall be as follows: Wednesday, May 2, 1984—8:30 a.m. Until the Conclusion of Business. The Subcommittee will continue its review of the joint NRC/B&W Owners Group/B&W/EPRI integral test program.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Babcock and Wilcox, the B&W Owners Group, the NRC Staff, their respective consultants, and other interested persons regarding this subject.

Further information regarding topics to be discussed, whether the meeting has been cancelled or reshceduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone

202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necesary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 5, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9533 Filed 4-9-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on May 3, 1984, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee will review NRC's Office for Analysis and Evaluation of Operational Data's Trends and Patterns program plan. The Subcommittee will also discuss methods that will allow the ACRS to hear and discuss reports of significant plant operating experience.

In accordance with the procedures outlined in the Federal Register on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recording will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 3, 1984—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard K. Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST.

Dated: April 5, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9534 Filed 4-9-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co. (Turkey Point Plant Unit Nos. 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida. The licensee provide, among other things, that the facilities are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements in Appendix R of 10 CFR Part 50. Appendix R contains the general and some of the specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. This rule required all licensees of the plants licensed prior to January 1, 1979, to submit by March 19, 1981: (1) Plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capability pursuant to Paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provision of § 50.48(c)(6) was to be invoked. The licensee responded to these requirements by letter dated February 4, 1981, and supplemented by letters dated March 19, 1981, November 9, 1981, July 1, 1982 and October 22, 1982.

By letter dated March 19, 1981, the licensee requested exemptions from Sections III.G, III. J, and III.O of Appendix R to 10 CFR Part 50. However, we denied exemption requests on Section III.J for lack of specificity and III.G for those areas where the justification was based only on previous approval in the fire protection Safety Evaluation (SE). We indicated that the licensee needs to either meet the requirements of Section III.G for previously closed areas, or provide a detailed fire hazard analysis supporting an alternative approach. In the fire protection SE, we reported the following open items:

Item 3.1.2/3.2.3, Fire Water Supply
Item 3.2.4, Auxiliary Building Corridor
Item 3.2.5, Cable Spreading Room
Item 6.0, Fire Brigade Size

By letters dated February 4, 1981 and March 19, 1981, the licensee committed to meet our guidelines for fire brigade size and requirements of Section III.A for the fire water supply. The remaining open items are resolved in the following evaluation. We, therefore, consider all open items to be resolved.

By letter dated July 1, 1982 and supplemented on October 22, 1982, the licensee requested additional exemptions from Section III.G and III.J of Apendix R. In our draft Safety Evaluation (SE), we recommended granting five of the exemption requests and denying fifteen. The licensee was evaluating fire protection from the "design basic fire" approach instead of the "protective features" approach.

By letter dated Apirl 8, 1983 and supplemented on May 12, June 6, and September 30, 1983, the licensee superseded the previous submittals and utilized the protective features approach in evaluating fire protection for the Turkey Point facilities.

III

The April 8, 1983 submittal, as supplemented on May 12, June 6, and September 30, 1983, requested twenty-two exemptions from Appendix R to 10 CFR Part 50 (twenty from III.G, one from III.J and one frm III.O).

Unit 4 Component Cooling Water Area (Fire Zone 47)

Unit 3 Component Cooling Water Area (Fire Zone 54)

The licensee requests exemptions from Section III.G.2 to the extent it requires 20 feet of separation and the installation of total area coverage automatic fire suppression systems.

Fire Zone 47 is outdoors and separated from other plant areas by 3-hour fire rated walls. This area contains 3 redundant component cooling water (CCW) pumps for Unit No. 4. Control

cables for each pump are located in a common enclosure. The licensee proposes to reroute the local controls for one pump to achieve 20 feet of separation free of intervening combustibles. This area also contains manholes and duct banks which contain redundant intake cooling water cables. The licensee proposes to install 2-inch curbs around each covered manhole to preclude flammable liquid spills from entering.

The fuel load in the area is low and manual hose stations and portable fire extinguishers are available. The licensee proposes to install an automatic wet pipe sprinkler system, an additional open head deluge sprinkler system activated by Ultra Violet (UV) fire detectors and early warning fire detection systems throughout the area.

Fire Zone 54 contains the 3 redundant component cooling water pumps for Unit 3. It is similar to Zone 47 except it does not contain manholes and duct banks. The proposed modifications for Zone 47 are applicable to Zone 54 with the exception of the modifications for the manholes.

For the protection of redundant cables and equipment separated by less than 20 feet free of intervening combustibles, Section III.G.2 requires automatic suppression and detection throughout the area in conjunction with 1-hour fire barriers to separate one train of components.

The committed additional open head deluge sprinkler system will be activated by UV fire detectors. The UV fire detectors will respond to fires within milliseconds to activiate the deluge sprinkler system. Because the in-situ fuel load in the zones is low and the licensee has committed to install additional automatic fire detection and suppression systems, which will provide fast total coverage of the CCW pumps, we have reasonable assurance that one train of CCW pumps will remain free of fire damage. The 12 feet separation between the CCW pumps will provide adequate passive protection until the deluge sprinkler system is activated and extinguishes fire. There is also adequate time for the fire brigade to intervene.

Based on the above evaluation, the existing protection combined with the proposed modifications provides a level of fire protection in the Unit 3 and Unit 4 Component Cooling Water Pump Areas (Fire Zones 47 and 54) equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Ground Floor Vestibule Unit 4 Containment Area (Fire Zone 79)

Auxiliary Feedwater Pump Area (Fire Zone 84)

Condensate Storage Area Unit 3 (Fire Zone 89)

Main Steam Platform Unit 4 (Fire Zone 114)

Main Steam Platform Unit 3 (Fire Zone 115)

The licensee requests exemptions from Section III.G.2 to the extent it requires the installation of automatic fire detection and suppression systems.

Fire Zone 79 is located outside and the fuel load in the zone is light. Manual hose stations and portable fire extinguishers are available. Redundant safe shutdown cables with less than 20 fet of separation, free of intervening combustibles, are installed in this area. The licensee proposes to either separate the Train B redundant cables from the Train A cables by 20 feet, free of intervening comnbustibles, or wrap the Train B cables in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zone 84 is an outside area which houses all three auxiliary feedwater pumps and redundant safe shutdown cables are routed through the area. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to provide alternative shutdown capability for the auxiliary feedwater pumps by installing two 100% capacity standby steam generator feed pumps independent of this area capable of operation upon a loss of offsite power. In addition, the licensee will either reroute one train of redundant cables to achieve 20 feet of separation, free of intervening combustibles, or wrap one train of cables in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zone 89 is an open area with limited combustibles containing the condensate storage tank, transfer pumps and safe shutdown related equipment and cables. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to either separate one train of redundant cables by 20 feet, free of intervening combustibles, or wrap one train in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zones 114 and 115 are outside areas which contain the main steam isolation and atmospheric dump valves. Portable fire extinguishers, standpipe and hose stations are available.

These areas do not comply with Section III.G because automatic suppression and detection systems are not installed in the areas.

For redundant cables in the areas, other than the specific cables proposed to be changed, it is our opinion that the possibility of a fire of sufficient magnitude to affect redundant systems is slight due to the open area and height of cables above the floor. Therefore, we have reasonable assurance that one train will be maintained free of fire damage. In addition, we agree with the licensee's conclusion that the fire protection modifications proposed along with the physical arrangement of Fire Zones 79, 84, 89, and 114 and 115 will provide sufficient protection for the redundant safe shutdown equipment in this area and full compliance with the specific provisions of Section III.G would not add significantly to overall fire protection of the plant.

Based on the above evaluation, the existing protection combined with the proposed modifications provide a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Fire Zones 113 and 116—Unit 4 and Unit 3 Respectively

Feedwater Platform

The licensee requests an exemption from III.G to the extent that it requires redundant safe shutdown equipment be protected by a 1-hour rated fire barrier and the installation of automatic fire suppression systems in the areas.

Zones 113 and 116 are the feedwater platforms for Unit 4 and Unit 3, respectively. They contain safe shutdown equipment and associated cables for their respective units. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to install early warning fire detection in both zones. The licensee also proposes to either separate one train of redundant cables in each fire zone to achieve 20 feet separation, free of intervening combustibles, or wrap one train of redundant cables in an approved 1-hour fire rated barrier until 20 feet separation, free of intervening combustibles, is achieved.

These areas do not comply with Section III.G because redundant Auxiliary Feedwater (AFW) components are not separated by 1-hour fire barriers and automatic fire

suppression systems have not been installed in the areas.

These areas are outdoors. Redundant cables are separated by 20 feet, free of intervening combustibles, or will be rerouted and the redundant AFW valves are separated vertically by approximately 8 feet in both areas with a minimum of a ¼' inch thick steel platform installed between the redundant valves. It is our opinion that due to the open area, separation and protection of the redundant cables, early warning fire detection and the configuration of the redundant AFW valves between the feedwater platform, the possibility of a fire of sufficient magnitude to affect redundant AFW systems components is slight. Therefore, we have reasonable assurance that one train will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications and commitments provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Unit 4 Intake Area (Fire Area 119)

Unit 3 Intake Area (Fire Zone 120)

The licensee requests exemptions from Section III.G to the extent that it requires the installation of automatic fire suppression systems.

The Unit Nos. 3 and 4 intake structures are contiguous and are designated Fire Zones 119 and 120. The zones contain the intake cooling water pumps and associated cables. The licensee proposes to wrap the 4C and 3C power and control cables from the embedded conduit to the motor terminal block of the pumps. In addition, the local control stations for the 4B, 4C, 3B and 3C pumps will be enclosed with a 1-hour fire rated barrier. The floor has numerous openings to the intake water and combustible are limited to lubricating oil in the steel motor housings. The oil provides unpressurized lubrication. The oil has a flashpoint of greater than 400Ī1° F. These zones do not contain hot surfaces to ignite the oil. Fire protection in the zones consist of manual hose stations and portable fire extinguishers. The licensee proposes to install early warning fire detectors in that portion of the zones containing the intake cooling water pumps.

These areas do not comply with Section III.G because automatic suppression systems are not installed in the zones.

These areas are open without a ceiling. We find this arrangement will prevent the accumulation of hot stratified gases from anticipated fires. Redundant cables and equipment are separated by 28 feet or will be enclosed in a 1-hour fire rated barrier. It is our opinion that due to the open area, separation of redundant equipment and early warning fire detection, the possibility of a fire of sufficient magnitude to affect redundant systems prior to the arrival of the fire brigade is slight. Therefore, we have reasonable assurance that one train of equipment will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Diesel Radiator Room (Fire Zone 131)

The licensee requests an exemption from Section III.G to the extent that it requires the total enclosure of one Diesel Radiator Room by 3-hour rated fire barriers.

This area houses radiators and cooling fans for both units' diesel generators. The in-situ combustibles are insignificant and portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to install a partial height (10 feet high) 3-hour fire rated barrier between the radiators for the Unit 3 and 4 diesel generators; provide curbing 2 inches high directly against the west side of the diesel generator radiators; and reroute, independent of the area or separate with a 3-hour fire rated barrier, control cables for Diesel Generator 3 Breaker to Bus 4A.

This area does not comply with Section III.G because redundant diesel radiator rooms are not enclosed by complete 3-hour fire rated barriers.

There are no in-situ combustibles in this area and any exposure fires would be of limited severity and duration. The proposed 3-hour fire barrier between the redundant cooling fans will protect one unit from a floor level fire in the redundant unit. Because the west wall of the area is open to the atmosphere, rising hot gases will be vented and dissipated before redundant equipment is damaged. This combination of features compensates for the lack of a complete 3-hour fire barrier.

Based on the above evaluation and proposed modifications, the protection provided for the diesel generator radiator area provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemption is granted.

Fire Zones 11, 12, and 13 (Fire Area B) Unit 3 Residual Heat Removal Area

Fire Zones 14, 15, and 16 (Fire Area C) Unit 4 Residual Heat Removal Area

The licensee requests an exemption from Section III.G to the extent that it requires 1-hour rated fire barrier for protection of redundant safe shutdown cables and equipment and the installation of automatic fire suppression capability throughout these areas.

These two areas are essentially identical areas consisting respectively of the Unit 3 and Unit 4 residual heat removal (RHR) pumps and heat exchangers in the Auxiliary Building.

For analysis purposes, because of the unprotected openings in the floor/ceiling assemblies, the licensee has combined these zones into one fire area. Each area contains redundant RHR pumps, heat exchangers, associated components and other safe shutdown cables. The combustible loading is limited to the oil and grease associated with pumps and motor operated valves in the areas. The licensee proposes the following Unit 4 modifications: Upgrade perimeter walls and ceilings of Fire Area B to a 3-hour barrier by sealing all piping and other penetrations and by installing 3-hour rated fire doors and dampers in all doorways and ventilation duct penetrations; upgrade the partial height wall between Zones 12 and 13 by sealing all penetrations to a 3-hour rating; upgrade the wall between Zone 11 and Zones 12 and 13 by sealing all penetrations to a 3-hour rating with the exception of the 5' by 8' access way to Zone 13; provide fire detection in Zones 11, 12, and 13; and provide 1-hour rated protection for RHR Pump 3A power and control cables routed through Zone 13.

The licensee proposes the following Unit 3 modifications: Upgrade perimeter walls and ceiling of Fire Area C to 3-hour barriers by sealing all piping and other penetrations and by installing 3-hour rated fire doors and dampers in all doorways and ventilation duct penetrations, respectively; upgrade partial height wall between Fire Zones 15 and 16 by sealing all penetrations in the partial height wall to a 3-hour rating and; upgrade the wall between Zones 14, 15 and 16 by sealing all penetrations to a 3-hour rating with the exception of the 5' by 8' access way to Zone 16.

These areas do not comply with Section III.G because complete 3-hour barriers are not used to separate the redundant equipment.

In the RHR area, the licensee proposes to provide a 16 feet, partial height, 3-hour fire barrier to separate the

redundant RHR pumps in each fire area. In addition, the licensee proposes to provide early warning fire detection in each area. The only significant in-situ combustible in the fire area is grease and the pump motor lubricating oil. We agree with the licensee that the probability of ignition of the oil is low because the lubricating oil has a high flashpoint (approximately 450°F) and that sufficiently hot surfaces do not exist in this fire area to cause the ignition of the lube oil. Because of the low in-situ fuel load and early warning fire detection, we have reasonable assurance that the partial height barrier will provide adequate protection for the RHR pumps for anticipated fires in the areas and that one train of RHR systems will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications, provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Unit 4 Charging Pump Room (Fire Area N)

Unit 3 Charging Pump Room (Fire Area O)

The licensee requests exemptions from Section III.G.2 to the extent it requires the installation of an automatic fire suppression system in the entire fire area and the installation of fire doors.

These two areas are essentially identical areas consisting of the Unit 4 and Unit 3 charging pumps. The areas are separated from other plant areas by 3-hour fire rated barriers. Fire protection in each area consists of early warning fire detection, manual hose stations and portable fire extinguishers. The combusible loading in these areas is light.

The licensee proposes the following modifications: Upgrade perimeter walls in each area to 3-hour rated barriers by sealing all piping and other penetrations and by installing 3-hour rated doors and dampers in doorways and ventilation penetrations respectively, protect conduits and reroute or protect control cables for charging pumps 4B and 3B with 1-hour rated protection and protect the 4A and 3A charging pump cables; protect the local control stations for charging pumps 4B and 3B by providing an enclosure fabricated from 1-hour rated materials or relocate outside of this fire area; reroute in conduit and protect with 1-hour rated materials, the cables for LCV-4-115B, and LEV-3-115B, wherever the separation from cables for MOV-4-350 and MOV-3-350 is less than 20 feet, free of intervening combustibles; provide a water suppression system in each area with coverage protecting the charging pumps, associated cables and valves and all combustibles in the area. The activation of the automatic water suppression system will not adversely affect the operation of the charging pumps.

This area does not comply with Section III.G because the proposed automatic suppression systems do not protect the entire fire areas.

It is our opinion that due to the configuration and protection provided for the charging pumps and the low in-situ fuel load, the proposed partial suppression system provides reasonable assurance that one train will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications, provides a level of fire protection equivalent to the technical requirements of section III.G of Appendix R. Therefore, the exemptions are granted.

Fire Area P—Containment Building—Unit 4

Fire Area Q—Containment Building—Unit 3

The licensee requests exemptions from Section III.G to the extent that it requires the installation of a noncombustible radiant energy shield between redundant safe shutdown equipment and cables separated by a distance of less than 20 feet.

Each Containment Building is essentially open and considered to be one fire area. Access is available via the personnel air lock, emergency air lock and the access hatch. No hose stations or automatic suppression is provided; however, portable fire extinguishers are available and ionization type fire detectors are installed. Redundant shutdown equipment and cables are located in the containments. Combustibles consist of lubricating oils and cables. Controlled access limits the possibility of transient combustibles.

The licensee proposes the following modifications to Unit 4: Reroute the control cables for valve AOV-4-460 through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valves AOV-4-200 A, B and C as far as physically possible; reroute the control cables for valve AOV-4-387 throught the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve HCV-4-137 as far as physically possible; reroute the control cables for AOV-4-310A through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve AOV-4-310B as far as physically possible; and provide a minimum of 20 feet of separation for cables between two trains of reactor coolant system hot and cold leg temperature instrumentation, wherever physically possible. Route the two trains through separate penetration areas; provide 1-hour rated protection to the conduit for LT-4-460 to the maximum extent possible, in the pressurizer missile shield wall area where separation from conduits for LT-4-459 is less than 20 feet; provide dedicated portable emergency lighting outside the containment for containment entry to facilitate manual operation of the valves; and install radiant energy shields to separate the charging line isolation valve and associated cabling.

The licensee proposes the following modifications to Unit 3: Reroute the control cables for valve AOV-3-460 through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valves AOV-3-200A, B and C; reroute the control cables for AOV-3-310A through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve AOV-3-310B; provide a minimum of 20 feet of separation for cables between two trains of reactor coolant system hot and cold leg temperature instrumentation, where physically possible. Route the two trains, when provided, through separate penetration areas; provide 1-hour rated protection on the conduit for LT-3-460 to the maximum extent possible in the pressurizer missile shield wall area where separation from conduits for LT-3-459 is less than 20 feet; provide dedicated portable emergency lighting units outside the containment for containment entry to facilitate manual operation of valves; and install radiant energy shields to separate the charging line, isolation valves and associated cabling.

The technical requirements of Section III.G are not met because radiant energy barriers are not provided for redundant trains of safe shutdown equipment and cabling separated by less than 20 feet. The licensee proposes rerouting of cables or the installation of fire barriers and radiant energy shields for all the redundant equipment, except pressurizer equipment associated with operation and located within the missile shield wall. These areas are void of in-situ combustibles. These areas are inaccessible during plant operation. All cabling inside the missile shield walls are routed in conduit. Due to their configuration and location within the containment and to the restricted access

of these sub-areas during plant operations, an exposure fire involving the accumulation of significant quantities of transient combustible materials is unlikely. Because there are only a few cables in these subareas and all cables are routed in conduit, a fire of sufficient magnitude to damage redundant cables or components is also unlikely.

Based on the above evaluation, the existing protection combined with the proposed modifications for the containment areas, provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Units 3 and 4 Control Room (Fire Area MM)

The licensee requests an exemption from Section III.G.3 to the extent that it requires the installation of a fixed suppression system in the control room.

The control room is a continuously occupied space which houses controls and instruments necessary to remotely operate valves, pumps, motors, etc. required for plant operation. Most of these controls and instruments are mounted on centrally located panels. Redundant safe shutdown related cables are routed in the area to various control panels. Ionization type fire detectors are installed, portable fire extinguishers and hose stations are available. The licensee proposes to provide a single train alternative shutdown for each unit independant of this fire area.

This area does not comply with Section III.G, because the control room is not provided with fixed suppression. The control room is equipped with the area fire detectors, and is provided with both a hose station and fire extinguishers for manual fire fighting. The fire load in the area is low. In addition, the licensee proposes an alternate shutdown system with control capabilities for those systems necessary to maintain safe-shutdown capability which is independent of the main control room. The fire protection features currently installed in the control room and the continuous manning of the control room provide adequate defense-in-depth fire fighting capability for this area.

Based on the above evaluation, we conclude that the installation of a fixed fire suppression system will not significantly increase the level of fire protection in the control room. The existing protection combined with the proposed modifications provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemption is granted.

Exterior Wall Penetrations

The licensee requests an exemption from installing 3-hour fire rated doors and dampers in exterior wall penetrations in the Auxiliary Building, Control Building, Diesel-Generator Building and Switchgear Building. We have reviewed the licensee's requests and find that the exterior walls in these buildings do not separate redundant safe shutdown equipment and no fire hazards exist within 50 feet of the buildings or automatic water curtains have been provided. Therefore, no exemptions from Section III.G of Appendix R are needed.

Emergency Lighting In Containment Units 3 and 4

The licensee has performed an analysis of the effects on safe shutdown capability following a fire. The analysis identified the equipment requiring manual operation to achieve cold shutdown which is located inside the containments.

The licensee requests an exemption from Section III.J to the extent that it requires 8-hour battery powered lighting units inside the containments to enable operator access to the shutdown cooling valves. The licensee proposes to provide dedicated portable emergency lighting for containment entry.

Because manual operation of the shutdown cooling return valves may not be needed for several hours after the loss of onsite power, the benefits provided by 8-hour emergency lighting units may be marginal. Since additional personnel will be available during this time frame to carry and position the lights, we agree with the licensee that dedicated portable lighting units will provide acceptable illumination for containment access and the installation of 8-hour emergency lighting units inside the containments will not greatly enhance safety.

The proposed dedicated portable lighting units provide a level of fire protection equivalent to the technical requirements of section III.J of Appendix R. Therefore, the request for exemption is granted.

Oil Collection System for Reactor Coolant Pumps

An exemption is requested from Section III. to the extent it requires an oil collection tank sized to hold the lube oil inventory of all three RCP motors.

Each unit has three reactor coolant pumps with an oil collection system which drains to a vented closed collection tank. The quantity of lubricating oil in each pump is 200 gallons. The capacity of the oil collection tank is 265 gallons. The components have been designed to be capable of withstanding a safe shutdown earthquake (SSE).

The collection tank is arranged such that if a failure of more than one RCP motor lube system occurred, the oil collection tank would overflow onto the lower containment floor. The lubricating oil used in the RCP motors has a flashpoint of approximately 450°F. There are no ignition sources at the floor level of th lower containment.

The RCP motor lube oil system does not comply with Section III.0 because the oil collection tank is not sized to contain the entire lube oil system inventory. The oil collection tank is provided with sufficient capacity to hold the total lube oil inventory of one reactor coolant pump with margin and is designed so that any overflow will be drained to a safe area. We agree with the licensee that this combination of features is acceptable.

Based on the above evaluation, the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirements of Section III.O of Appendix R. Therefore, the exemption is granted.

IV

Summary

Based on our evaluation as detailed in Section III above and the Safety Evaluation dated March 27, 1984, the following exemptions are granted.

Exemptions from Section III.G of Appendix R:

1. Unit 4 Component Cooling Water Area (Fire Zone 54)
2. Unit 3 Component Cooling Water Area (Fire Zone 53)
3. Unit 4 Ground Floor Vestibule Containment Area (Fire Zone 79)
4. Auxiliary Feedwater Pump Area (Fire Zone 84)
5. Units Condensate Storage Area (Fire Zone 89)
6. Unit 4 Feedwater Platform and Below (Fire Zone 113)
7. Unit 4 Main Steam Platform (Fire Zone 114)
8. Unit 3 Main Steam Platform (Fire Zone 115)
9. Unit 3 Feedwater Platform and Below (Fire Zone 116)
10. Unit 4 Intake Area (Fire Zone 119)
11. Unit 3 Intake Area (Fire Zone 120)
12. Diesel Generator Radiator Room (Fire Zone 131)
13. Unit 3 RHR Equipment Room (Fire Area B)

14. Unit 3 RHR Equipment Room (Fire Area C)

15. Unit 4 Charging Pump Area (Fire Area N)

16. Unit 3 Charging Pump Area (Fire Area O)

17. Unit 4 Containment Building (Fire Area P)

18. Unit 3 Containment Building (Fire Area Q)

19. Unit 3 and 4 Control Room (Fire Area MM)

Exemptions from Section III.O of Appendix R:

Emergency Lights Inside Containment Units 3 and 4

Exemptions from Section III.J of Appendix R:

Oil Collection System Units 3 and 4

Based on our evaluation as detailed in Section III above and Safety Evaluation dated March 27, 1984, the following exemption requests from Section III.G of Appendix R are not needed: Exterior Wall Penetrations.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions requested by the licensee's letters as referenced and discussed in III. and IV. above are authorized by law, will not endanger life or property or the common defense and security, are otherwise in the public interest, and are hereby granted.

The Commission has determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this section.

A copy of the Safety Evaluation dated March 27, 1984 related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 27th day of March 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-9536 Filed 4-9-84 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating To Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: Manley Truck Line, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Manley Truck Line Inc. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, in connection with Manley's purchase of assets of the Chicago Kansas City Freight Line, Inc. A notice Manley's request for exemption from the requirement was published on January 4, 1982 (47 FR 118) and, after the submission by Manely of new information, was republished on December 12, 1983 (48 FR 55361). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption, the comments received, and the PBGC's responses to the request and the comments are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7103, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, D.C. 20006, (202) 254-4860.

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA sections 4204(c) and 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On January 4, 1982 (47 FR 118), the PBGC published a request from the Manley Truck Line, Inc. ("Manley") to waive the bond/escrow requirement of section 4204(a)(1)(B) of ERISA in connection with the March 13, 1981 purchase by Manley of the operating assets of Chicago Kansas City Freight Line, Inc. ("CKC"). On the basis of new and updated financial information, the PBGC republished the request from Manley on December 12, 1983 (48 FR 55361).

The republished notice provided additional information on the combined withdrawal liability of CKC and Manley to the Central States, Southeast and Southwest Areas Pension Fund ("Central States Fund"), since both companies were contributing employers to that plan prior to the sale. In addition, the notice provided information from Manley on the financial condition of the controlled group of corporations of which Manley is a member, including new financial statements reflecting the fair market value of assets and liabilities and independent appraisals of certain of those assets.

CKC contributed to the following multiemployer plans: Central States

Fund, Local 710 of the International Brotherhood of Teamsters Pension Fund ("Local 710 Fund"), and Chicago Independent Truck Drivers, Helpers, and Warehouse Workers Union Pension Fund ("Chicago Independent Fund"). The following chart lists the three multiemployer plans for which an exemption is requested, the estimated amount of CKC's and Manley's withdrawal liability (where applicable, and excluding, in Manley's case, the liability attributable to the purchased operations), and the estimated amount of the bond/escrow that would be requried under ERISA section 4204(a)(1)(B) with respect to each plan:

Fund	Estimate of seller's liability	Estimate of purchaser's liability (if applicable)	Amount of bond/escrow[1]
Central States Fund	$1,200,000	$1,400,000	$167,062
Local 710 Fund	200,000	N/A	57,501
Chicago Independent Fund	387,820	N/A	47,584
Total	1,787,820	1,400,000	272,147

[1] The bond/escrow amount for each plan represents the average annual contribution that CKC made to that plan for the three plan years preceding the plan year in which the sale occurred.

Thus the total combined withdrawal liability of Manley and CKC to all of the plans affected by this transaction is $3,187,820.

Manley is a wholly owned subsidiary of Overland Enterprises, Inc. ("Overland"). According to its consolidated unaudited financial statements, Overland and its subsidiaries have net tangible assets of $3,738,465. Most of the assets were valued as of October 31, 1981, although the valuations for certain other assets are as current as December 1982. Overland and its subsidiaries had a net income after taxes of $142,649 for 1980 and $114,059 for 1979. The consolidated group suffered a loss of $66,747 in 1978.

In response to the original notice of pendency, the PBGC received opposition comments from each of the plans affected by this request. After republication of the notice, the Central States Fund indicated that it neither supported nor opposed the request. The Chicago Independent Fund indicated that it would concur with the position taken by the Central States Fund. However, the Local 710 Fund renewed the objection it had initially filed in response to Manley's application, and requested that the PBGC consider that objection. The Local 710 Fund objection did not allege that Manley would be unable to meet its obligations to the Local 710 Fund or offer any evidence to that effect. The Local 710 Fund comment argued that, if the variance request were granted, the PBGC should impose several conditions on the approval.

The first condition suggested by the Local 710 Fund was that Manley ensure CKD's compliance with the seller's bond requirement under ERISA section 4204(a)(3)(A), by requiring that Manley annually report on the seller's financial condition to determine whether a seller's bond is required and by requiring that Manley post a bond equal to the CKC's withdrawal liability in the event of the seller's failure to do so. The PBGC does not believe that these conditions are justified. The plan does not have to rely on the purchaser in order to obtain financial information on the seller. Under ERISA section 4219(a), the seller would be obligated, upon written request by the plan, to provide such information as the plan sponsor reasonably determines is necessary to enable the plan sponsor to "comply with the requirements of this part." Since the liquidation bond is a requirement of ERISA, and since the plan has the responsibility for monitoring that requirement, the necessary financial information may be obtained by the plan pursuant to its authority under section 4219(a). In addition, the purchaser should not be made responsible for the seller's failure to post the bond. Section 4204 establishes two distinct bonding requirements in a sale of assets, one for the purchaser and one for the seller. To compel the purchaser to post the seller's bond would impose an additional obligation on the purchaser beyond that contained in the statute.

The Local 710 Fund would also have the PBGC condition its approval on the requirement that Manley annually provide a financial statement to the plan to ensure that there has been no adverse change in the purchaser's financial situation since the exemption was granted. This condition suggests that the plan will determine, on an annual basis, whether the purchaser's financial condition is such to warrant a continued variance from the section 4204(a)(1)(B) bonding requirement. This is inappropriate however, since section 4204(c) gives the PBGC, not the plan, the authority to grant variances or exemptions from the bond/escrow provision.

In summary, the PBGC does not believe that the Local 710 comment demonstrates that this exemption will significantly increase the risk of financial loss to the plans.

The PBGC has reviewed the exemption request on the basis of the purchaser's ability to meet its obligations to the Plan. *James River-Dixie/Northern Inc.*, 48 FR 35057 (Aug. 2, 1983). The net tangible assets of Overland exceed not only the withdrawal liability of the pruchaser, but the combined withdrawal liability to the plans of both parties to this sale of assets. Thus, this case meets the standard for an exemption established in *Kohlberg, Kravis, Roberts and Co.*, 47 FR 40261, 40262 (Sept. 13, 1982).

Therefore, based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purpose of Title IV of ERISA and would not significantly increase the risk of financial loss to the plans. Accordingly, the PBGC hereby grants the request by Manley for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction statisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisifies such other requirements is made by the plan sponsor.

Issued at Washington, D.C., on this 3rd day of April 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-9451 Filed 4-9-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13862; 812-4314]

Pioneer Fund, Inc., and Pioneering Management Corp.; Application for an Order Granting Certain Exemptions and Permitting Certain Transactions

April 3, 1984.

Notice is hereby given that Pioneer Fund, Inc. ("Fund"), 60 State Street, Boston, MA 02109, a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end management investment company, and Pioneering Management Corporation ("Adviser," collectively with the Fund, "Applicants"), the Fund's investment adviser, filed an application on November 8, 1983, and amendments thereto on February 21, and March 15, 1984, requesting an order of the Commission (i) pursuant to Section 6(c)

of the Act exempting the Fund from the provisions of Section 12(d)(1) of the Act to the extent necessary to allow the Fund to form a wholly-owned subsidiary open-end investment company (the "Subsidiary"); (ii) pursuant to Section 17(d) of the Act exempting the Fund and its Subsidiary from the provisions of Section 17(a) of the Act to the extent necessary to permit the Fund to transfer assets to the Subsidiary; and (iii) pursuant to Section 17(d) of the Act and Rule 17d-1 thereafter to permit the Fund, the Adviser, and the Subsidiary to participate in the organization, funding, operation, and spin-off of the Subsidiary. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of its relevant provisions.

According to the application, the Fund is one of four open-end investment companies managed by the Adviser, a Delaware corporation. As of December 31, 1983, the Fund had net assets of $1,352,430,183, and 61,246,283 outstanding shares beneficially owned by over 175,000 shareholders.

Applicants state that the Adviser has attempted to meet investor demand for smaller mutual funds by organizing Pioneer II, Inc., in 1968 (net assets of $1,139,997,116 at December 31, 1983) and Pioneer Three, Inc., which first offered its shares to the public in November, 1982, and had net assets of $147,300,349 at December 31, 1983. (The fourth fund managed by the Adviser is Pioneer Bond Fund.) Based on its average monthly sales during 1983, Pioneer Three will have over $250,000,000 of net assets by the end of 1984, notwithstanding maximum permitted aggregate investments of $100,000 by any record holder. On the basis of these experiences, Adviser has concluded that its attempts to satisfy investor demand for smaller mutual funds by organizing new funds have succeeded only temporarily.

The application states that the Fund proposes to organize a wholly-owned subsidiary open-end investment company. The Subsidiary would be initially funded over a six-month period (beginning on the date the Subsidiary commences operations) by the transfer to the Subsidiary of ten percent (10%) of the net assets of the Fund (determined on the date the Subsidiary commences operations). Thereafter, the Subsidiary would receive an additional amount from the Fund on the first business day of each calendar month equal to ten percent (10%) of the net proceeds, if any, from sales of Fund shares during the preceeding calendar month. (Net proceeds would reflect reinvestments of dividends and capital gain distributions and redemptions of Fund shares during that month.) Shares of the Subsidiary would not be offered directly to the public.

Applicant's Subsidiary would pursue the identical investment objectives and polices of Pioneer except that all of the investments made by the Subsidiary would be in companies whose outstanding common stock had an aggregate market value not exceeding $200,000,000 on the date of the Subsidiary's initial investment ("Qualifying Portfolio Investments"). The Subsidiary would be permitted to make follow-on investments notwithstanding any growth in the aggregate market value of any of the Qualifying Portfolio Investments following the Subsidiary's initial investment therein.

After approximately five years from the date it commences business (or sooner if the net assets of the Subsidiary will have exceed $300,000,000 for six consecutive months) shares of the Subsidiary would be spun off as a stock dividend to those who are then shareholders of the Pioneer on the basis of one share of the Subsidiary for each share of the Fund outstanding. No further stockholder or Commission action is anticipated with respect to that stock dividend. Recipients of shares of the Subsidiary would be able to exchange them for shares of the Fund, if they wish to do so, without incurring any sales charge.

Applicants state that the principal reason for the proposed transaction is to give Fund shareholders the opportunity to have a portion of their investment in the Fund, one of the largest equity mutual funds, allocated to a smaller investment company which will have investments only in Qualifying Portfolio Investments. The fund has always had the right and opportunity to make Qualifying Portfolio Investments for its own account. However, there are usually not sufficient publicly-traded shares in smaller companies to permit the Fund to invest in them in a way meaningful to a billion dollar investment company. Applicants argue that the formation to the Subsidiary will afford the Fund the opportunity to develop through the Subsidiary a meaningful portfolio of such investments. The Fund believes its shareholders will support the proposal because (i) it will provide them with an indirect investment in a much smaller investment company without having to liquidate their investments in the Fund and pay resulting federal or state income taxes, (ii) the Subsidiary is likely to remain a relatively small investment company until it is spun off, and (iii) shareholders of the Fund will be able to look forward to a distribution of shares of the Subsidiary without the recognition of material taxable income (if any).

The Fund also asserts that the proposal will generate positive cash flow for the Fund. According to the application, the Fund's directors believe that this positive cash flow will provide the Adviser with added flexibility in identifying and acquiring new portfolio investments for the Fund as well as for the Subsidiary.

Applicants state that assets to be transferred from the Fund to the Subsidiary would consist of Qualifying Portfolio Investments of the Fund to the extent there are sufficient Qualifying Portfolio Investments. If it is necessary to transfer assets in addition to Qualifying Portfolio Investments, the Fund will transfer cash to the Subsidiary. Since it is consistent with the Fund's existing objectives and policies to invest in Qualifying Portfolio Investments and since the Fund intends to make a number of Qualifying Portfolio Investments irrespective of whether the proposed transactions are consummated, the Fund does not anticipate that any transfer of its assets to the Subsidiary will result in any adverse effect on its liquidity or any material increase in its portfolio turnover rate. The Fund reserves the right to make Qualifying Portfolio Investments for its own account after the organization and funding of the Subsidiary. However, the portfolios of Pioneer and the Subsidiary would not contain investments in the same Qualifying Portfolio Investments prior to the spin-off to the Subsidiary.

Applicants state that at the next annual meeting of its stockholders, the Fund plans to present to its shareholders its proposal with respect to the organization and funding of the Subsidiary. Since the Fund believes that the proposed transactions should not be effected without substantial stockholder support, it will condition consummation of the proposed transactions on the affirmative vote of the holders of at least seventy-five percent (75%) of the shares represented in person or by proxy at the annual meeting. Implementation of the proposal will also be subject to the receipt of an order of the Commission granting the requested exemptions, the effectiveness of a registration statement on form N-1A covering the Subsidiary and an indefinite number of shares of its

Common Stock and an amendment to Pioneer's registration statement on Form N-1A with respect to the proposed transactions.

Applicants represent that the management contract between the Subsidiary and the Adviser would be identical to the one between the Fund and the Adviser except that it would provide for a management fee of .45 of 1% of the average daily net assets of the Subsidiary. The existing management contract between the Fund and the Adviser provides for a management fee of .50 of 1% of the Fund's average daily assets up to $250,000,000, .48 of 1% of average daily assets between $250,000,000 and $300,000,000 and .45 of 1% of such assets over $300,000,000. The Adviser would not receive any additional management fee solely by reason of the organization, funding or spin-off of the Subsidiary.

According to the application, the Subsidiary would register under the Act as an open-end investment company prior to its commencing operations. Immediately prior to the spin-off of the Subsidiary, the Fund will hold shares of the Subsidiary's Common Stock equal to the number of shares of the Fund common stock then outstanding. The Subsidiary's directors would initially be the same individuals who are the directors of the Fund. Before the spin-off, directors' fees paid by the Fund would be allocated between the Fund and the Subsidiary on the basis of their respective net assets. After the spin-off, the Fund and the Subsidiary will each pay directors' fees which are then determined to be reasonable. No increase is contemplated in the aggregate directors' fees to be paid. The Fund does not, and the Subsidiary would not, pay any remuneration to officers. The Subsidiary would be named on a joint fidelity bond as an insured and maintain separate custody arrangements, all in compliance with the Act and the rules and regulations thereunder. Before the spin-off, all published financial statements of the Fund would include separate audited financial statements of the Subsidiary. The Fund's prospectus would include specific disclosures relating to the Subsidiary. Expenses with respect to the formation of the Subsidiary, approal of shareholders of the transactions contemplated by the proposal, the registration of the Subsidiary under the Act, the filing of this application and other organizational expenses would be borne by the Adviser, provided that the Subsidiary will pay state filing fees with respect to its authorized capital stock.

Applicants state that the Subsidiary would be an "investment company" as defined in Section 3(a) of the Act. Accordingly, the Fund's ownership of the Subsidiary would violate the proscription against ownership of more than 3% of the capital stock of another investment company in Section 12(d))(1) of the Act. Applicants further state that transfers of securities and cash from the Fund to the Subsidiary may be prohibited by Section 17(a) of the Act and that the Subsidiary's organization, funding, operations and eventual spin-off may be considered to involve the joint participation of the Fund, the Subsidiary, and/or the Adviser in one or more joint transactions prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder.

Applicants assert that Section 12(d)(1) of the Act is designed, *inter alia*, to prevent the pyramiding of management fees which would result from mutual funds investing in other mutual funds. They contend that since the Fund will pay only one management fee, based on the combined net assets of the Fund and the Subsidiary, there would not be any pyramiding of management fees. Applicants, in arguing that this proposal meets the standards of section 17(b) of the Act, further assert that the proposed transfers of assets from the Fund to the Subsidiary would not prejudice the Fund or the Subsidiary in any respect. Securities transferred from the Fund to the Subsidiary will be transfered at fair market value as of the close of business on the preceding business day in accordance with the Fund's procedures for computing its net asset value each day. Since the Subsidiary will be wholly owned until it is spun off, transactions between the Fund and the Subsidiary would neither prejudice any Fund shareholder nor benefit the Adviser or any other affiliated person of any affiliated person.

In arguing that the standards of Rule 17d-1 have been met, Applicants assert that the Fund and the Adviser have taken appropriate steps to assure that the Fund and the Subsidiary will be treated fairly in all respects. The Subsidiary's organizational costs will be paid by the Adviser which, notwithstanding that additional staffing will probably be required to manage the Subsidiary's portfolio, will not receive any additional management fee solely as a result of the organization, funding or spin-off of the Subsidiary. Prior to the spinoff, directors' fees will be allocated between the Fund and the Subsidiary in accordance with their respective net assets. Prior to the spinoff of the Subsidiary, investments will be allocated to Fund and the Subsidiary in accordance with their respective investment policies. If a proposed investment satisfies such policies of both the Fund and the Subsidiary, the Adviser will make the investment for the portfolio for which it is then most desirable.

According to the application, sharholders of the Fund may exchange their shares of the Fund (without paying a sales charge) for shares of Pioneer II, a mutual fund which is about the same size as the Fund and which has the same investment objectives and policies. Thus, shareholders who do not want to own shares of the Subsidiary may choose to exchange their shares for shares of a fund that is virtually idential to the Fund, or they similary may choose to exchange shares of the Subsidiary for shares of the Fund after the spin-off.

According to the application, the Fund believes that the proposed transaction would not favor the Adviser over other promoters in connection with the organization of new mutual funds. The funding of the Subsidiary with Qualifying Portfolio Investments and the management of a new portfolio of such investments will probably require additional staffing by the Adviser, but the Adviser will not receive a higher management fee on the combined assests of the Fund and the Subsidiary than it would receive on the same amount of assets of the Fund. Accordingly, the proposed transaction is considerably less attractive to the Adviser from a profit perspective than the more customary procedure for organizing new investment companies (which the Adviser recently followed in connection with the organization of Pioneer Three, Inc., referred to above, in November 1982). It is not the intention to the Adviser to utilize the proposed transactions for the purpose of proliferating investment companies for it to manage.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 30, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated below. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be

issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9531 Filed 4-9-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13012]

Storage Equities, Inc.; Application and Opportunity for Hearing

April 4, 1984.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an Application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of First Interstate Bank of California, a California banking corporation ("FICAL") under an existing indenture qualified under the Act, a supplement to that indenture, and a proposed second supplement to that indenture are not so likely to involve material conflicts of interest as to make it necessary in the public interest or for the protection of investors to disqualify FICAL from acting as Trustee under such Indenture and each supplement thereto.

Section 310(b) of the Act provides in part that, if a Trustee under an Indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a Trustee under a qualified Indenture shall be deemed to have a conflicting interest if such Trustee is Trustee under another Indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another Indenture under which other securities of the issurer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified Indenture and such other Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such Trustee from acting as Trustee under either of such Indentures.

The Applicant alleges that:

1. FICAL currently is acting as a Trustee under an Indenture and one Supplement thereto under which the Applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and FICAL and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This Indenture was filed as Exhibit 4.3 to Applicant's Registration Statement No. 2-80850 filed under the Securities Act of 1933 and has been qualified under the TIA under file no. 22-12633, and is incorporated herein by this reference. No notes have been issued directly under this Indenture, and it is not anticipated that any will be. Applicant has also entered into and filed, by way of post-effective amendment to the Registration Statement stated above, a First Supplemental Indenture under which FICAL is a trustee, and such First Supplemental Indenture appears as Exhibit 4.4 to the Registration Statement. That post-effective amendment was declared effective on January 26, 1984. Applicant has issued Series 1 through 9 of its secured convertible notes under this First Supplemental Indenture. Applicant intends to execute a Second Supplemental Indenture, the form of which is attached to Applicant's application, and thereafter Applicant will file a post-effective amendment to the above Registration Statement for the Second Supplement Indenture. Applicant proposes to issue Series 10 of its secured convertible notes under such supplement.

2. SEI wishes to appoint FICAL as Trustee under the Second Supplemental Indenture, and to receive approval for FICAL to serve under the First Supplemental Indenture.

3. The Applicant is not in default in any respect under the Indenture or the First Supplement thereto, nor, when the Second Supplemental Indenture is delivered, will it be in default thereunder or under any of the provisions of the Indenture or the First Supplemental Indenture.

4. Each series of secured notes issued or to be issued under the Indenture, the First Supplement thereto and the Second Supplement thereto are or will be secured by separate and distinct assets of Applicant, so that should FICAL have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage FICAL's action under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than April 30, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request shold be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9530 Filed 4-9-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20814; File No. SR-MSRB-84-10]

Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

April 3, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on March 23, 1984, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule A-8(a) concerning the signing of Forms 19b-4 submitted to the securities and Exchange Commission for proposed rules adopted by the MSRB. The rule change would allow the Secretary of the MSRB or any other person designated by the MSRB to sign Forms 19b-4, in addition to the Chairman of the MSRB.

This proposed rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the act.

Publication of the submission is expected to be made in the **Federal Register** during the week of April 2, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to file No. SF-MSRB-84-10.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9529 Filed 4-9-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/10-0086]

Delta Capital, Inc.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Busines Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1984)), for transfer of ownership and control of Delta Capital, Incorporated (DCI), 227 North Tryon Street, Suite 201, Charlotte, North Carolina 28202, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of DCI, which was licensed November 29, 1961, is subject to the prior written approval of SBA.

DCI is presently wholly-owned by Delta Associates, Inc. (DAI). Mr. Alexander B. Wilkins, Jr. is the beneficial owner of approximately 37 percent of DAI.

DAI proposes to sell substantially all of its assets, including all of the issued and outstanding capital stock of DCI, to Southgate Venture Partners (Southgate), a proposed North Carolina limited partnership. Mr. Wilkins will own, in the aggregate, a 70.25 percent undivided interest in the profits and losses of the partnership, and he will be the sole general partner to the partnership. The other shareholders of DAI will not participate as partners in Southgate.

Mr. William D. Humphries, the only limited partner owning 10 percent or more of the partnership (16.36), is the managing general partner of Walnut Street Capital Company, a licensed SBIC in New Orleans, Louisiana. Mr. Humphries will have no fiduciary responsibility in the affairs of DCI and will participate only as a limited partner of Southgate.

Following consummation of the sale of assets of DAI to Southgate, it is contemplated that there will be no initial change in the present officers or directors of DCI. The location of DCI will not change as a result of the change of ownership interests, nor will its plan of operations, area of operations, or portfolio composition be amended. DCI will continue to operate as a corporation.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner of DCI, and the probability of successful operation of DCI under this ownership, including adequate profitability, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than (fifteen days from the date of publication of this notice), submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Charlotte, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9494 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2118, Amdt. No. 1]

Florida; Declaration of Disaster Loan Area

The above-numbered Declaration (49 FR 7017), is amended by extending the deadline for filing applications for physical damage until June 23, 1984. All other information remains the same.

(Catalog of Federal Register Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9407 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2123]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Bertie, Cumberland, Duplin, Greene, Hertford, Pitt, Robeson, Sampson, Scotland, and Wayne in the State of North Carolina, constitute a disaster loan area because of damage resulting from severe storms and tornadoes beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 31, 1984, and for economic injury until December 31, 1984, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are—	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Business with credit available elsewhere	11.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (nonprofit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212312 for physical damage and for economic injury the number is 615600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

Jean P. Lewis,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-9495 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On January 4, 1984, a notice was published in the **Federal Register** (Vol. 49, 541), stating that an application had been filed by Rocky Mountain Ventures, Ltd., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license as a small business investment company.

Interested parties were given until close of business January 19, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301C of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08-0061 on March 20, 1984, to Rocky Mountain Ventures, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 50.011, Small Business Investment Companies)

Dated: March 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9493 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2122]

South Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Abbeville, Fairfield, Kershaw, Laurens, Marlboro, and Newberry in the State of South Carolina, constitute a disaster loan area because of damage resulting from servere storms and tornadoes beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physicial damage until the close of business on Mary 31, 1984, and for economic injury until December 31, 1984, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are—	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Businesses with credit available elsewhere	11.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (nonprofit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212212 for physicial damage and for economic injury the number is 615500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

Jean P. Lewis,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-9496 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting from 6 p.m.-10 p.m., on Thursday, May 3, 1984, and 8 a.m.-4 p.m. on Friday May 4, 1984, at the Viscount Hotel, 1960 Harbor Island Drive, San Diego, CA 92101, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Cy Fritz, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, CA 94102, (415) 556-2543.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 4, 1984.

[FR Doc. 84-9498 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 10:00 to 12:00 p.m., Monday, May 7, 1984, at the Salt Lake Art Center, 20 South West Temple, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah, (801) 524-5800.

Dated: April 5, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-9615 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License Application Nos. 04/04-0231; 04/04-D232]

NCNB SBIC Corp. and NCNB Venture Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business companies (13 CFR 107.102 (1984)), under the names of NCNB Venture Corporation and NCNB SBIC Corporation; One NCNB Plaza, Charlotte, North Carolina 28255, for licenses to operate as a small business investment companies (SBICs) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers and directors of NCNB Venture Corporation are as follows:

S. Epes Robinson, 2039 Queens Road, East Charlotte, North Carolina 28207, President Director

David C. Vorhoff, 419—50 W. 8th Street, Charlotte, North Carolina 28202, Vice President, Treasurer, Assistant Secretary

Rowena C. Foushee, 7700 Tuckaseegee Road, Charlotte, North Carolina 28214, Secretary

James M. Berry, 2730 Meade Court, Charlotte, North Carolina 28211, Director

J. G. Richards Roddey, 2920 Wickersham Road, Charlotte, North Carolina 28211, Director

James B. Sommers, 226 Huntley Place, Charlotte, North Carolina 28207, Director

F. William Vandiver, Jr., 3015 Wickersham Road, Charlotte, North Carolina 28211, Director

The proposed officers and directors of NCNB SBIC Corporation are:

Troy S. McCrory, Jr., 657 Boyce Road, Charlotte, North Carolina 28211, President, Director

Rowena C. Foushee, 7700 Tuckaseegee Road, Charlotte, North Carolina 28214, Secretary

Mary G. Covington, 300 Chiswick Road, Charlotte, North Carolina 28211 Assistant Secretary
Francis B. Kemp, 301 Eastover Road, Charlotte, North Carolina 28207, Director
John B. Pipkin, II, Carmel on Providence Apartments, Charlotte, North Carolina 28211, Director

NCNB National Bank of North Carolina will be the sole shareholder of both applicants. NCNB Corporation, a North Carolina corporation, is sole shareholder of NCNB National Bank of North Carolina. As of January 1, 1984, there were 20,165 holders of record of common stock of NCNB Corporation.

The applicants will have different investment policies. NCNB Venture Corporation (Venture) will concentrate on making equity investments in emerging growth companies; NCNB SBIC Corporation (NCNB SBIC) will make debt investments in companies that are beyond the start-up stage.

Venture will provide financing in larger amounts than will NCNB SBIC. The latter also intends to apply for Leverage from SBA from time to time; Venture does not.

NCNB SBIC intends to operate primarily in the States of North Carolina, South Carolina and Florida. Venture will seek it opportunities in the entire Southeastern United States.

Management of Venture has been associated with the Corporation Finance Group of its parent; NCNB SBIC's President has been associated with the parent's Specialized Industries Group.

Both Applicants will begin operations with $0.1 million private capital. In addition, Venture has an irrevocable commitment from the parent for an additional $4.0 million to be contributed from time to time.

Because both applicants will have a common owner and one common officers SBA's prior written approval is necessary under § 107.602 of the Regulations.

Matters involved in SBA's consideration of the applications include the general business reputation and character of shareholders and management, and the probability of successful operation of the new companies in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of these companies. Any such communications should be addresses to: Deputy Associate Administrative for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Charlottee, North Carolina.

Dated: March 30, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9613 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615400]

Texas; Designation of Disaster Loan Area

Bexar County in the State of Texas constitutes a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on January 3, 1985, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9611 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615300]

Utah; Designation of Disaster Loan Area

Grand County in the State of Utah constitutes a disaster area because of landslides during April 1983 which closed the main highway and rail access to the county for a number of months (to December 1983). Eligible small businesses may file applications for economic injury assistance until the close of business on January 3, 1985, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, 916-440-3651

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9612 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0458]

Venray Capital Corp; License Surrender

Notice is hereby given that Venray Capital Corporation, 981 Route 22, P.O. Box 6817, Bridgewater, New Jersey 08807, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Venray Capital Corporation was licensed by the Small Business Administration on March 30, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on March 27, 1984, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1984.

Robert G. Lineberry,

Deputy Associate Admininstrator for Investment.

[FR Doc. 84-9614 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5473]

U.C. Capital, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the amended Act (15 U.S.C. 661 *et seq.*), has been filed by U.C. Capital, Inc. (applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1984).

The Officers, Directors, and the Stockholder of the Applicant are as follows:

Stephen Shou-Quio Ko, 47 King Road, Landing, New Jersey 07850—President, Treasurer, Director, 100 percent Stockholder
Christina Yue-Sang Yeung-Ko, 47 King Road, Landing, New Jersey 07850—Secretary, Director
Raymond B. Curran, 1100 Clove Road, Staten Island, New York 10301—General Manager

John Kwai-Sang Yang, 7411 Ashburn Street, Vancouver, British Columbia, Canada—Director

The Applicant, a New Jersey corporation with its principal place of business at 121 Shelley Drive, Hackettstown, New Jersey 07840, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of common stock.

The Applicant will initially conduct its operations in the State of New Jersey.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Hackettstown, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9500 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Marquez (New Mexico) Uranium Mine; Record of Decision

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Record of decision for the Marquez (New Mexico) uranium mine.

SUMMARY: In accordance with TVA procedures implementing the National Environmental Policy Act (NEPA), 48 FR 19264 (April 28, 1983), and consistent with 40 CFR 1506.3 (1982), TVA prepared an environmental impact statement (EIS) on a proposed underground uranium mining project to be located in the Canon de Marquez, McKinley County, New Mexico. Notice of intent to prepare an EIS and invitation for public comment on the scope of the document was published in 46 FR 45233 (September 10, 1981). A public meeting to solicit comments on the scope of the project was held on October 1, 1981, in Marquez, New Mexico. The draft EIS was sent to the U.S. Environmental Protection Agency (EPA) and made available to the public on August 5, 1983. Notice of availability of the draft statement was published in the **Federal Register** on August 19, 1983. The final EIS was sent to EPA and made available to the public on January 18, 1984, and a notice of availability of the final document was published in the **Federal Register** on February 3, 1984.

TVA, a corporate agency and instrumentality of the United States created by the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831–831dd (1982)), consistent with its statutory mandate to supply an ample amount of electrical power, has under construction or in operation a number of uranium-fueled generating plants. As one of many activities TVA has undertaken to ensure an adequate supply of uranium for these plants, TVA is planning to underground mine, through its operator, the uranium deposits located in the Canon de Marquez in McKinley County, New Mexico.

Construction and operation of the underground mine would be expected to have the following environmental effects: (a) A temporary change in land use for 48.5 hectares (120 acres) from wildlife habitat and recreation to mineral extraction; (b) a minor alteration in topography near the proposed pond sites due to reclamation of waste rock piles; (c) minimal impacts on land due to limited vehicular traffic and road construction; (d) temporary depression of groundwater levels in the Westwater Canyon Member of the Morrison Formation in the mine vicinity during mine life; (e) short-term project-induced impacts to surface water and shallow groundwater quality; (f) a temporary decrease in air quality in the vicinity of the mining operations due to fugitive dust and exhaust emissions from combustion-driven mining and support vehicles, and releases of radon and short-lived radon progeny from ventilation shafts and ore piles; (g) a temporary decrease of plant and animal species at the mine site; (h) a minor and temporary effect on aquatic systems downstream from the mine and settling ponds due to sedimentation; and (i) a minor increase of noise levels in the immediate vicinity of mine shafts and vents.

The no action alternative and alternatives for securing uranium ore by other methods were considered but were found insufficient to meet TVA objectives. None of the alternatives explored were environmentally preferable. TVA also evaluated site specific alternatives including the following: different shaft and support building siting, mining techniques, and reclamation options.

TVA will proceed with implementing the preferred alternative identified in the Marquez Uranium Mine Final Environmental Impact Statement. TVA has decided that pursuing the preferred alternative will help assure a future supply of uranium for use as fuel in its existing and future lightwater reactors. The preferred alternative will also ensure that this uranium will be acquired under a set of controlled environmental conditions with emphasis on the protection of the environment. It is concluded that the mining of uranium ore at Marquez under the conditions stated in the final EIS is an environmentally acceptable action and that the mining of this ore at Marquez is the most reasonable (preferred) alternative.

FOR FURTHER INFORMATION CONTACT: Write Martin E. Rivers, Director of Environmental Quality, Tennessee Valley Authority, Knoxville, Tennessee 37902, or call TVA's Citizen Action Office toll free: 1–800–362–9250 (in Tennessee) or 1–800–251–9242 (in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Virginia, Missouri, and Arkansas).

SUPPLEMENTARY INFORMATION: TVA is a corporate agency and instrumentality of the United States, created by the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831dd (1982)). Consistent with its statutory mandate to supply an ample amount of electrical power, TVA has under construction or in operation a number of uranium-fueled generating plants. As one of many activities TVA has undertaken to ensure an adequate supply of uranium for these plants, TVA is planning to underground mine through its operator and 50-percent co-owner, Kerr-McGee Nuclear Corporation (Quivira Mining Company), uranium deposits located in the Canon de Marquez in the southeast corner of McKinley County, New Mexico. The activity would take place on 577 hectares (1,426 acres) of land in the Canon de Marquez area in which TVA holds rights to a 50-percent interest in mineral leases.

In carrying out its responsibilities under the TVA Act, TVA follows a policy designed to develop and enhance a quality environment. As a result of this policy, TVA has long considered environmental matters in its decisionmaking. Offices and divisions within TVA employ personnel with a wide diversity of experience and academic training which enables TVA to utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking. As a Federal agency, TVA is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA).

The environmental impacts associated with the construction and operation of the uranium mine near Marquez, as well as the combined impacts associated with transporting and processing the ore at an existing uranium mill have been evaluated. Alternatives also considered include no-action, purchase of uranium, participation in alternative projects, borrowing equivalent uranium, and delaying the action.

Each alternative requires the eventual mining and processing of uranium ore with an associated set of environmental impacts similar to the preferred action, whose control and mitigation would occur outside of TVA's zone of influence. The preferred action alternative would permit TVA to acquire the needed uranium under a set of controlled environmental conditions with emphasis on the protection of the environment.

Adverse unavoidable impacts for the preferred action alternative and the other (except no action) alternatives would be similar; therefore, only the unavoidable impacts associated with the preferred action are described. Potential construction and operational impacts include: (a) A temporary change in land use for 48 hectares (120 acres) from wildlife habitat and recreation to mineral extraction; (b) a minor alteration in topography near the proposed pond sites due to reclamation of waste rock piles; (c) minimal impacts on land due to limited vehicular traffic and road constuction; (d) temporary depression of groundwater levels in the Westwater Canyon Member of the Morrison Formation in the mine vicinity; (e) short-term project-induced degradation of surface water and shallow groundwater quality; (f) a temporary decrease in air quality in the vicinity of the mining operations due to fugitive dust and exhaust emissions for combustion-driven mining and support vehicles, and releases of radon and short-lived radon progeny from ventilation shafts and ore piles; (g) a decrease of plant and animal species at the mine site; (h) a minor and temporary effect on aquatic system downstream from the mine and settling ponds due to sedimentation; and (i) a minor increase of noise levels in the immediate vicinity of mine shafts and vents.

Site specific environmental impacts associated with three sites which could be potential processing sites were not addressed in detail. Impacts for these sites have been previously discussed in Environmental Reports prepared by the mill licensee for the State of New Mexico for licensing of these mills. (Bokum Resources Corporation, 1978; Woodward-Envicon, Inc., 1974; and Kerr-McGee Nuclear Corporation, 1975.)

Mitigative measures which may reduce or minimize impacts include; best management practices during construction to reduce soil erosion and potential sedimentation, revegetating disturbed areas, using best available control equipment technology to reduce potential air pollution, treatment of any point source discharges to receiving drainages, disposal of solid wastes in an approved sanitary landfill, implementation of spill prevention control and countermeasure plans, the protection of groundwater quality, careful selection of facility locations, timing of activities, recovery or protection of cultural resources, and mitigation of wildlife impacts. Monitoring programs will be established to determine the effectiveness of these mitigative measures, and audits will be performed to ensure compliance with these measures and applicable regulations.

There would be no significant long-term effects on the environment due to the Marquez Project. In the short-term, while the area is being mined, a total surface area of approximately 48.5 hectares (120 acres) would be unavailable for other uses. This area would be reclaimed after mining activity ceased and would then be available for essentially the same purposes as prior to mining. The groundwater levels in the Westwater Canyon Member of the Morrison Formation, a principal water supply aquifer in the San Juan Basin, would be depressed during mining operations in the area. However, water levels in the aquifer should rise again to preproject levels after mine dewatering ceases.

The major irreversible and irretrievable commitment of resources would be the use of mined uranium for energy production. It is estimated that 6.8 million pounds (3.1 million kg) of U_3O_8 would be extracted. About 0.25 gallons (0.95 1) of petroleum fuel would be used to produce each ton of ore and waste rock. It is estimated that approximately 6.3×10^8 kWh of electricity would be required over the life of the project. About 1.5 million cubic feet of propane or natural gas would be used monthly. Some of the materials used in the mine and support buildings and equipment would also be unrecoverable.

W. F. Willis,

General Manager, Tennessee Valley Authority.

[FR Doc. 84-9654 Filed 4-9-84; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

April 3, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 16, at 1 p.m., through April 20, 1984, at 1 p.m., at FAA Headquarters, 800 Independence Avenue SW., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and

upgrading of terminology and procedures.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than the day before the meeting, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Service, AAT-301, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is scheduled to be held from July 23 through July 27, 1984, in Seattle, Washington.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on April 3, 1984.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 84-9453 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-6]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 30, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 4, 1984.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23913	Beech Aircraft Co	14 CFR 23.49(b)(1)	To permit type certification of the Beechcraft Model 38P Series, single engine pressurized turboprop, airplanes with a stall speed greater than 61 knots.
08429	Northern Air Cargo, Inc	14 CFR 91.39 & 121.157	To reconsider Denial of Exemption 770N which permits pettioner to use its restricted category C-82 airplanes to carry cargo for compensation or hire subject to certain conditions and limitations and any operations specifications issued by the Regional Director, Alaska Region.
23895	Cam Aircraft Inc	14 CFR 65.91(c)(2)	To permit petitioner to apply for an inspection authorization without having been actively engaged in maintaining aircraft for at least the 2-year period before he applies.
23879	Comair Inc	14 CFR 121.411 & 121.413	To permit petitioner to use Flight Safety International flight instructors for initial factory flight training of Comair pilots in the SAAB/Fairchild SF-340 airplanes.
23924	United Airlines	14 CFR 61.157(e)	To permit petitioner to use its Phase II simulators in lieu of aircraft for certain pilot training and flight checks of pilots not employed by petitioner.
23828	Mead	14 CFR 21.181	To permit petitioner to operate two Falcon 20 aircraft using an FAA-approved minimum equipment list.
23927	Helicopters Unlimited	14 CFR 141.35(d)(3)(i)	To permit petitioner to use Mr. Kenneth Suzuki as an assistant chief flight instructor without having the required 1000 hours of flight instruction experience.
23933	Flight Dynamics, Inc	14 CFR 21.195(b)	To permit petitioner to conduct market surveys and sales demonstrations while operating under an experimental certificate.
23936	TCOM Corp	14 CFR 101.13(a)(2) & (4)	To permit the operation of a moored balloon more than 500 feet above the surface of the earth and within five miles of the boundary of any airport.
23900	Kenneth Norton	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotocraft rating without having 1,200 hours of flight time as a pilot within the 8 years before the date of application.
23937	Federal Express Corp	14 CFR 121.583	To permit employees of petitioner's Canadian licensee, Cansica Inc., to fly aboard petitioner's all-cargo aircraft using flight observer and courier seats.
23935	EMS Helicopters	14 CFR 135.261(b)	To permit petitioner to operate Bell 206L and Augusta 109 Mark II helicopters in a hospital emergency service without complying with certain of the duty time limitations of that section.
23938	Flying Tigers	14 CFR 121.583 & 121.547	To permit petitioner to provide free transportation for employee dependents on its B-727-100 freighter aircraft.
23940	Virgin Islands Air Service	14 CFR 91.303 & 91.305	To allow petitioner to operate three DC-8 airplanes in noncompliance with the operating noise limits.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23821	John E. Robison, Sr	14 CFR 61.63(c)(1) & (2)	To permit petitioner to transfer class ratings from his Canadian tourist permit to his U.S. private pilot certificate. *Denied 3/22/84.*
23941	Dr. Donald E. Bates, D.D.S	14 CFR 61.19(d)(2)	To extend the validity of petitioner's flight instructor certificates for 1 year without completion of the required biennial flight instructor course. *Denied 3/20/84.*
23920	KSL Television News	14 CFR 45.27 & 45.29	To allow petitioner to use its Bell Jet Ranger Helicopter displaying 3-inch registration markings on the side of the fuselage and 20-inch bottom markings instead of 12" side marks. *Denied 3/22/84.*
23774	Eli Lilly Int'l. Corp	14 CFR 91.32(b)	To allow petitioner to operate its Gulfstream II (G–II) aircraft, serial numbers 68 and 250, up to flight level (FL) 430 without requiring one pilot to wear and use an oxygen mask at all times above FL 410 so long as there are two pilots at the aircraft controls, and each pilot has a quick-donning type of oxygen mask. *Denied 3/20/84.*
23836	Southern California Air Service Inc	14 CFR 135.183(a)	To allow the operation of its single-engine airplane, over water, below an altitude that will allow it to reach land in the event of an engine failure. *Denied 3/29/84.*
23233	Regional Airline Assn	14 CFR Portions of Part 121	To permit the operation of propeller driven airplanes with more than 30 but less than 61 passengers seats pursuant to the domestic air carrier rules of Part 121 without complying, with dispatch system requirements. *Denied 3/28/84.*
23463	United Air Lines, Inc	14 CFR 91.32(b)(1),(ii) & 121.333(c)(2)	To permit petitioner to operate its Boeing 767 (B–767) type airplanes above flight level (FL) 410 and up to the maximum operating altitude of FL 431 without one pilot at the controls of the airplane wearing and using an oxygen mask secured, sealed, and supplying oxygen. *Denied 3/28/84.*
18864	Continental Helicopters Inc	14 CFR 135.261(b)	Extension of Exemption 2701A to permit petitioner to operate a helicopter in a hospital emergency service without meeting the flight and duty time limitations of this section, subject to conditions and limitations. *Partial grant 3/22/84.*
23829	Sowell Aviation Co., Inc	14 CFR 61.71(a) & Appendices A, B, C, D, & E of Part 141.	To permit petitioner to graduate students from its Part 141 approved courses when they have been trained to a specific performance level rather than the minimum flight time requirements. Additionally, an exemption would permit certain graduates to be eligible to take the instrument practical test when that student does not hold at least a valid second-class medical certificate issued under Part 67. *Partial grant 3/29/84.*
22576	Ray's Flight Systems, Inc	14 CFR 61.157(d)(1), & 61.63(d) (2) and (3)	To amend Exemption 3544 to allow trainees to complete a practical test for issuance of a type rating to be added to any grade airplane simulator as set forth in Appendix A of Part 61. *Granted 3/14/84.*
23843	Hendrik A. Gideonse	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotorcraft rating without having had at least 1200 hours of flight time as a pilot within the 8 years before the date of exemption. *Granted 3/13/84.*
23576	Florida Marine Patrol	14 CFR 91.79(c) & 91.65(b)	To permit operations of law enforcement aircraft below minimum safe altitudes and through airport traffic areas without landing or taking-off. *Granted 3/12/84.*
23899	Air Canada	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 35 DC–9–32: C–FTLH; CFTLJ; C–FTLL; C–FTLM; C–FTLO; C–FTLQ; C–FTLR; C–FTLS; C–FTLT; C–FTLW; C–FTLX; C–FTLZ; C–FTMA; C–FTMB; C–FTMC; C–FTMD; C–FTME; C–FTMF; C–FTMG; C–FTMH; C–FTMI; C–FTMJ; C–FTMK; C–FTML; C–FTMO; C–FTMP; C–FTMQ; C–FTMT; C–FTMU; C–FTMV; C–FTMW; C–FTMX; C–FTMY; C–FTMZ; & C–FTMM. *Granted 3/23/84.*
23685	Dept. of Navy, MCAS, Beaufort, SC	14 CFR 101.23(b) & (c)	To permit petitioner to fire Missile Plume Simulator GTR–18 Class B Fireworks, "Smokey Sam." Firings will be done within established Controller Firing Areas at MCAS Beaufort. *Granted 3/12/84.*
23429	Amos J. Peaslee, Jr.	14 CFR 91.90(b)(1)(ii)	To permit aircraft operating to and from Peaslee Airport to enter and exit the Philadelphia Terminal Control Area from the south without maintaining contact with ATC. *Granted 3/12/84.*
23854	Airline Training Institute	14 CFR 61.157(d)(1), 61.63(d)(2) & (3)	To permit trainees to complete a practical test for the issuance of an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, by substituting for the flight test required by § 61.63(d) (2) and (3) the test requirements in Appendix A to Part 61. *Granted 3/22/84.*
23835	Aircraft at your call d/b/a/ Hospital Air Transport	14 CFR 135.261	To permit petitioner to operate a helicopter in hospital emergency medical evacuation service without complying with the duty time limitations. *Granted 3/29/84.*
16787	Petroleum Helicopters, Inc	14 CFR 133.1(a), & 133.45(a)(3)	To renew Exemption 2534C, as amended, to permit petitioner to use for hire, certain helicopters to lower and hoist harbor pilots, on an external hoise, to and from ships at sea, on a test basis. *Granted 3/29/84.*
23036	Icelandair, S.A. (Icelandair)	14 CFR Portions of Parts 21 and 91	To extend Exemption 3531D, which allows petitioner to operate a leased U.S.-registered DC–8–55 aircraft using an FAA-approved minimum equipment list. *Granted 3/20/84.*

[FR Doc. 84-9455 Filed 4-9-84; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on May 2–4, 1984 in Conference Room 233, Building 1244, National Aeronautics and Space Administration, Langley Research Center, Hampton, Virginia commencing at 9:00 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the First Meeting Held on February 2–3, 1984; (3) Presentation by the NASA Special Projects Office; (4) Review First Draft of Committee Report on Minimum Operational Standards for Airborne Thunderstorm Detection Equipment; (5) Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on April 2, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-9452 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on April 26-27, 1983 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on November 29-30, 1983; (3) Review and Discussion of the FAA Altimetry Data Collection Program; (4) Review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; (5) Status Briefing on the Report Drafting Group Activities; (6) Discussion on the Glossary Preparation Group Report; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 27, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-9454 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Washtenaw County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Recision of Notice of Intent published in the February 1, 1984 **Federal Register.**

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding the notice of intent to prepare a supplement to the final environmental impact statement for the treatment of the I-94/Wiard Road interchange at US-12 in Ypsilanti Township, Washtenaw County, Michigan published in the **Federal Register** February 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Fort, Jr., District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1879 or (Commercial) (517) 377-1879 or Mr. Ross E. Lowes, Manager, Social and Economic Studies Section, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373-2226.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Michigan Department of Transportation (MDOT), has determined that the work covered by the Final Environmental Statement, FHWA-MI-EIS-80-01-F, approved by the FHWA on May 29, 1981 for the proposed improvement of the I-94/Wiard Road interchange and the minor design changes proposed to accommodate the traffic movements from northbound Wiard Road to the neighborhood west of Wiard Road and at McCartney Street, do not constitute a significant change in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. The minor design changes described above have been made in response to the concerns of local residents and agencies as indicated on page 65 of the approved Final EIS. A supplement to the Final EIS for those changes is not considered necessary and will not be prepared as indicated in the notice published in the February 1, 1984 **Federal Register** and is rescinded.

The proposed improvement of the US-12 overpass and relocation of the eastbound ramp connection to I-94 referred to in the February 1, 1984 notice has been determined by FHWA to be a separate action independent of the proposed I-94/Wiard Road interchange improvement and will be processed separately in accordance with established FHWA procedures.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: April 2, 1984.

David A. Merchant,

Division Administrator, Lansing, Michigan.

[FR Doc. 84-9607 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition(s) for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition(s) are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before May 24, 1984 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for

examination during regular business hours (9 a.m.–5 p.m.) in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

West Virginia Northern Railroad, Incorporated

(Waiver Petition Docket Number SA–84–6)

The West Virginia Northern Railroad, Incorporated (WVN) seeks a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). The WVN seeks a permanent waiver of compliance with § 231.30(d)(2) of the regulation for three locomotives. Section 231.30(d)(2) requires that locomotives used in switching service built before April 1, 1975, may not be equipped with end footboards or pilot steps after September 30, 1978. Whenever end footboards are removed from a locomotive, the uncoupling mechanism and horizontal end handholds of the locomotive must be modified to comply with paragraphs (f) and (g) of this section. The WVN indicates that it seeks this waiver because "no personal injuries resulting from the use of the footboards has occurred for at least the past ten years . . .".

Richmond, Fredericksburg and Potomac Railroad Company

(Waiver Petition Docket Number RSFC–84–9)

The Richmond, Fredericksburg and Potomac Railroad Company (RFP) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The RFP seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 152 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car, if after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The RFP indicates that it seeks this waiver because a twelve (12) month extension (until December 31, 1984), is needed to locate the 152 off-line cars and make suitable arrangements for the necessary modifications.

Old Colony and Newport Railway

(Waiver Petition Docket Number LI–84–5)

The Old Colony and Newport Railway seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229), Safety Glazing Standards (49 CFR Part 223), Railroad Safety Appliance Standards (49 CFR Part 231), and Railroad Power Brakes and Drawbars (49 CFR Part 232). The Old Colony and Newport Railway seeks a temporary waiver of compliance with several sections of these regulations for a BRE-Leyland manufactured "USA Demonstrator Railbus". Part 229 prescribes minimum Federal safety standards for all locomotives except those propelled by steam power. Part 223 prescribes minimum requirements for glazing materials used in windows of locomotives and passenger cars. Part 231 requires that locomotives and cars be equipped with a minimum complement of safety appliances. Part 232 specifies minimum power brake and drawbar requirements including rules for inspection, testing, and maintenance of air brake equipment. The Old Colony and Newport Railway indicates that it seeks this waiver in order to allow the National Railroad Foundation and Museum to operate this vehicle in revenue service between June 11, 1984, and October 1, 1984, to assess the suitability of the vehicle for their operating requirements and to permit BRE-Leyland to demonstrate the capabilities of the vehicle.

Issued in Washington, D.C. on March 23, 1984

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84–9520 Filed 4–9–84; 8:45 am]

BILLING CODE 4910–06–M

Urban Mass Transportation Administration

Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of change in operating procedures for storing and publishing transit data collected under Section 15 of the Urban Mass Transportation Act of 1964, as amended.

SUMMARY: Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), prohibits the Secretary of Transportation from making any grants under section 5 or 9 of the UMT Act unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to a prescribed Reporting System and Uniform System of Accounts and Records. Section 15 reports are due to the Urban Mass Transportation Administration (UMTA) 120 days after the end of reporting agencies' fiscal years. UMTA's operating procedures for administering the Section 15 program provide for storing on computer tape and publishing in annual reports data submitted over a 1 year period. The 1 year period, or Section 15 reporting year, includes transit financial and operating data reported for fiscal years ending between July 1 of a given year and June 30 of the following year. This notice changes the Section 15 reporting year to a calendar year basis, i.e., January 1 to December 31, effective January 1, 1983. This does not affect transit agencies' fiscal years or the due dates for annual Section 15 reports, but changes the grouping of these repors for statistical analyses and for annual report publication purposes.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Director, Information Services, Office of Technical Assistance, Urban Mass Transportation Administraion, Room 6419, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–9157.

SUPPLEMENTARY INFORMATION: Section 15(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) (UMT Act) requires the Secretary of Transportation to ". . . develop, test, and prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories and a uniform system of accounts and records." Section 15(b) of the UMT Act states that "After July 1978, the Secretary shall not make any grants under Section 5 or 9 unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records * * *."

The Secretary has delegated the above responsibilities to the Urban Mass Transportation Administration (49 CFR 1.51). UMTA published regulations to implement Section 15 on January 19, 1977 (42 FR 3772). These regulations are codified at 49 CFR Part 630—Uniform System of Accounts and Records and Reporting System (Section 15 regulations) and have been amended several times (43 FR 58928, December 18, 1978; 44 FR 4493, January 22, 1979; 44 FR 26052, May 3, 1979; and 48 FR 22926, May 23, 1983).

Section 15 reports are due to UMTA 120 days after the end of reporting agencies' fiscal years. UMTA prepares Section 15 annual reports and annual data bases from the financial and operating information contained in the agencies' reports. Each Section 15

annual report and annual data base includes data submitted by transit agencies for their fiscal years ending on or between July 1 and June 30. This 1 year period is referred to as the Section 15 reporting year. It was designed to match the majority of grantees' fiscal years and the Federal fiscal year at the time it was established.

The establishment and use of a Section 15 reporting year is an operating procedure for administering the Section 15 program. These procedures provide for the storing on computer tapes and publishing in annual reports, *National Urban Mass Transportation Statistics*, transit data submitted over a one year period. Each Section 15 reporting year runs from July 1 of a given year to June 30 of the following year. Thus, the FY 1979 Section 15 Annual Report contains data from transit agencies whose fiscal years ended between July 1, 1978 and June 30, 1979, the FY 1980 Section 15 Annual Report contains data from agencies whose fiscal years ended between July 1, 1979 and June 30, 1980, and so on.

This notice announces the change of the Section 15 reporting year to a calendar year basis, i.e., January 1 to December 31. The change is effective January 1, 1983. Thus, the FY 1983 Section 15 reporting year runs from January 1 to December 31, 1983, the FY 1984 reporting year is January 1 to December 31, 1984, and so on. The period of time between the end of the old reporting year and the beginning of the new reporting year, i.e., fiscal years ending between July 1, 1982 through December 31, 1982, will be considered a transition period and these data will not be published. The data will be stored on computer tape.

Several benefits result from this change. First, a calendar year Section 15 reporting year will help clear up long-standing confusion over the fiscal year information covered in the annual reports and in the annual data bases. Under the July 1 to June 30 reporting year, the annual reports and data bases from which they are derived contain data from 2 fiscal year "groupings." The FY 1982 Section 15 annual report, for example, combines information from agencies reporting on their own 1981 fiscal years (approximately 50% of the reporting agencies) with information from agencies reporting on their own 1982 fiscal years (another 50%, approximately). By contrast an annual report based on data from a January 1 to December 31 reporting year will bring together information from the same fiscal year groupings for over 99% of all reporting agencies.

The second benefit of changing to a calendar year Section 15 reporting year relates to the administration of the Section 9 program. Section 9 of the UMT Act allocates Federal transit assistance to urbanized areas with populations over 200,000 partly on the basis of several Section 15 data elements. The new reporting year will enable UMTA to use more recent Section 15 statistics for computing Section 9 funding apportionments. For example, under the calendar year reporting year the FY 1985 Section 9 funds will be apportioned using Section 15 data for fiscal years ending on or between January 1 and December 31, 1983. Under the July 1 to June 30 reporting year, FY 1985 Section 9 funds would have been apportioned using data for fiscal years ending on or between July 1, 1982 and June 30, 1983.

Another benefit relates to recent modifications in Section 15 reporting requirements. Changes have been made to Section 15 reporting and certification requirements to accommodate specific needs of the Section 9 program and to handle new reporting entitles. The combination of new reporting requirements and new reporters signals a period of learning and adjustment for all Section 15 reporting entities. UMTA has sought to ease the adjustment by issuing guidance outling the new reporting requirements and procedures. Nevertheless, the transition is proving to be difficult. Many transit agencies, particularly new reporters, are experiencing problems filing accurate and complete FY 1983 Section 15 reports. The shift in reporting years will help ease the adjustment for agencies with fiscal years ending on or between July 1 and December 31, 1982, i.e., those agencies whose fiscal years end in the transition period between the old and new reporting years. Under the July 1 to June 30 reporting year, information supplied by these agencies would have appeared in the FY 1983 Annual Report. Due to the change to a January 1 to December 31 reporting year, UMTA will include this information in the computer data base but not publish it in the FY 1983 Section 15 Annual Report. Instead, the FY 1983 Section 15 Annual Report will contain information supplied by these transit agencies for their fiscal years ending between July 1, 1983 and December 31, 1983.

Excluding the information furnished by transit agencies with fiscal years ending on or between July 1 and December 31, 1982 will not create gaps in the Section 15 data base. UMTA will incorporate the information into the Section 15 computer data base, thus making it available for use by researchers and analysts. These data will not be used for apportioning Section 9 funds. Rather, the data that these reporters submit in calendar 1983 will be used for this purpose.

The change from a July 1–June 30 to a January 1–December 31 Section 15 reporting year will result in an additional change to the Section 15 annual report. The scheduled publication date for each annual report will shift from May to November.

The change to a calendar year Section 15 reporting year does not have a significant effect on the age of transit agencies' Section 15 reports at the time the annual report is released to the public. The difference in the total age of all reports between the July 1 to June 30 reporting year and the January 1 to December 31 reporting year is negligible.

UMTA carefully considered the benefits and implications summarized above in deciding to change to a calendar year Section 15 reporting year. The action does not affect transit agencies' fiscal years or the due dates for their annual Section 15 reports, but only changes the grouping of these reports for statistical analyses and for annual report publication purposes.

Issued on March 30, 1984.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 84-9355 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. on May 14–15, 1984. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The session will convene at 9 a.m. both days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is

limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Office of the Administrator, Veterans Administration Central Office (phone 202/389-5518) prior to May 7, 1984.

Dated: April 3, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-9492 Filed 4-9-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Mine Safety and Health Review Commission	1
Federal Reserve System	2
Equal Employment Opportunity Commission	3
International Trade Commission	4
National Transportation Safety Board	5

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 4, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, April 11, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Corporation, Docket Nos. WEST 82-146-RM, WEST 82-207-M. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR § 57.6-5, a mandatory safety standard dealing with the storage of blasting agents.)

CONTACT PERSON FOR MORE INFORMATION: Jeal Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-9653 Filed 4-6-84; 11:28 am]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 16, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Request by the General Accounting Office for Board comment on a draft report regarding System pricing of check clearing activities.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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.

Dated: April 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9714 Filed 4-6-84; 3:54 pm]

BILLING CODE 6210-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Correction

On March 22, 1984, the Equal Employment Opportunity Commission published a notice of a meeting of the Commission to be held March 27, 1984. The document was assigned an incorrect Federal Register Document number, FR Doc. No. 84-7668. The document has been re-numbered as 84-9481.

BILLING CODE 1505-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-18]

TIME AND DATE: 9:30 a.m., Tuesday, April 17, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 731-TA-131, -132, and -138 [Final] (Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202)523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-9716 Filed 4-6-84; 3:54 pm]

BILLING CODE 7020-02-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-12]

TIME AND DATE: 9 a.m., Tuesday, April 17, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: The first three items will be open to the public; the last three items will be closed under Exemption 10 of the Government in the Sunshine Act. Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Sinking of the U.S. Tug TECO #2 While Assisting in the Docking of the U.S.S. WILLIAM V. PRATT, Pensacola Bay, Florida, October 12, 1983.
2. *Pipeline Accident Report:* Mid-America Pipeline Company Liquefied Petroleum Gas Pipeline Rupture, near West Odessa, Texas, March 15, 1983.
3. *Brief* of Major Field Aviation Accident Investigation, File No. 3045, Charlotte, Texas, May 5, 1982.
4. *Opinion and Order:* Adminstrator v. York, Docket SE-5944; disposition of respondent's appeal.
5. *Opinion and Order:* Commandant v. Foedisch, Docket ME-95; disposition of appellant's appeal.
6. *Opinion and Order:* Administrator v. Wagner, Docket SE-5727, disposition of the Administrator's appeal.
7. *Opinion and Order:* Administrator v. Simon, Docket SE-5825; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

April 6, 1984.

[FR Doc. 84-9715 Filed 4-6-84; 3:54 pm]

BILLING CODE 4910-58-M

federal register

Tuesday
April 10, 1984

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600

Standards for Emissions From Methanol-Fueled Motor Vehicles and Methanol-Gasoline Fuel Equivalency Factor; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL 2554-6]

Standards for Emissions From Methanol-Fueled Motor Vehicles and Methanol-Gasoline Fuel Equivalency Factor

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This action announces EPA's intent to establish emission standards and test procedures for the certification of methanol-fueled motor vehicles and engines. The Agency also intends to develop a fuel equivalency factor for methanol so that methanol-fueled vehicles may be appropriately included in corporate-average fuel economy determinations and have appropriate fuel economy labels. This action is being taken to remove the possibility that the absence of specific emission standards for methanol in EPA's regulations and of a fuel equivalency factor could hinder the development of methanol as a transportation fuel. The Agency invites all interested parties to comment in writing on both aspects of this rulemaking action.

DATES: A one-day workshop on this rulemaking will be held on May 30, 1984, convening at 9:00 a.m. Written comments on this ANPRM should be submitted to EPA by June 29, 1984.

ADDRESSES: The workshop will be held in the Conference Room of the U.S. Environmental Protection Agency, Motor Vehicle Emissions Laboratory, 2665 Plymouth Road, Ann Arbor, Michigan 48105. Written comments, other than those given directly to EPA at the workshop, should be submitted (in duplicate if possible) to: Central Docket Section (LE-131A), Environmental Protection Agency, Attention: Docket No. A-84-05, 401 M Street, SW., Washington, D.C. 20460.

Materials relevant to this rulemaking have been placed in Docket No. A-84-05 by EPA. The docket is located at the above address in the West Tower Lobby, Gallery I, and may be inspected between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged by EPA for copying of docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Rykowski, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4339.

SUPPLEMENTARY INFORMATION:

I. Background

There has been active interest in the use of essentially pure (neat) alcohols as alternative transportation fuels for over a decade.[1] Work in this area has increasingly centered on methanol (CH_3OH) for three general reasons. First, the technology to produce methanol from U.S.-based energy sources such as natural gas, coal, wood, or other biomass is well known, and its production economics appear significantly better than other synthetic fuels from these sources. Second, engines designed to operate on methanol are more energy efficient (work output per thermal energy input) than similar gasoline engines and, when used in diesel engines, methanol appears to have the same, and potentially better, energy efficiency than the traditional diesel engine operated on diesel fuel. Third, engines operating on methanol, including diesel engines, have relatively low emissions of both nitrogen oxides (NO_x) and particulate. As the control of these two pollutants from diesel engines is technologically difficult, yet environmentally desirable, the reduction of these two emissions without losing the fuel efficiency advantage of the diesel engine is a significant attribute from the Agency's point of view. In addition, methanol does not need octane enhancers to prevent engine knock, so additives such as lead, ethylene dibromide, and benzene are avoided.

The interest in methanol is not just academic. Methanol-fueled vehicles have been built in limited production runs by major automobile companies (i.e., Ford and Volkswagen), and large test fleets are being run in California and several other parts of the world. For example, the California Energy Commission is currently testing over 500 methanol-fueled vehicles and the Bank of American is testing over 250 such vehicles. These programs demonstrate the possibility that methanol-fueled vehicles could enter the marketplace in significant numbers in the near future.

Before being mass-produced in significant numbers, however, methanol-fueled vehicles would have to comply with certain emission standards. EPA's current emission standards and test procedures purport to apply only to gasoline- and diesel-fueled vehicles, although the Clean Air Act (CAA) specifies or authorizes EPA to adopt such requirements for all vehicles regardless of fuel type. Thus, methanol-fueled vehicles could become the third major type of certified vehicle and would be subject to both pre-production and in-use requirements. The Agency has not adopted standards specifically for methanol-fueled vehicles to date, since the timing of their introduction in the marketplace in significant numbers was not clear.

Methanol producers and vehicle manufacturers are now indicating a reluctance to make the substantial investments necessary to create a national methanol vehicle/fuel market without prior knowledge of the applicable emission standards and associated test procedures. Similar concerns apply to the uncertain treatment of methanol-fueled vehicles with respect to the Corporate Average Fuel Economy. (CAFE) standards and the fuel economy labeling requirements under the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 et seq. In this regard, even though those EPCA programs are currently applicable only to gasoline- and diesel-fueled. vehicles, EPA has the responsibility under section 503(d)(2) of EPCA to determine the proper method of calculating the gasoline-equivalent fuel economy of vehicles operating on other fuels, so that the Department of Transportation can determine if such alternative fuels should be included in such programs. Additionally, these potential impediments to the development of methanol as a transportation fuel were raised in a report by the General Accounting Office[2] and, along with other issues, have led to the formation of a Cabinet Council Work Group on methanol.

To eliminate any such hindrance, EPA is hereby initiating the development of suitable emission standards and test procedures for the certification of methanol-fueled light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty engines (HDEs), and motorcycles (MCs). Furthermore, the Agency is developing a suitable method to include methanol-fueled vehicles appropriately in the fuel economy programs.

II. Emission Standards

As discussed previously, the emission control requirements of the CAA generally do not differentiate between vehicles operating on different fuels, but generally apply to all vehicles regardless of fuel type. To date, EPA has

[1] Neat methanol fuel, as discussed herein, is to be distinguished from methanol blends, where a small amount of methanol (e.g., 2-5 percent) is mixed with gasoline and sold as gasoline.

[2] The report, entitled "Removing Barriers to the Market Penetration of Methanol Fuels," is available for review in EPA Docket No. A-84-05.

promulgated emission standards and test procedures which purport to apply only to gasoline- and diesel-fueled vehicles, as these are the only types of vehicles mass-produced for sale. For gasoline-fueled vehicles, the standards apply to exhause hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_x), and evaporative HC. For vehicles using diesel engines, the standards apply to exhaust HC, CO, NO_x, particulate, and smoke.

With respect to those pollutants already regulated, EPA expects to apply the CO and NO_x standards for each vehicle class to methanol-fueled versions of these vehicles. There are four reasons for taking this approach. First, this has generally been the approach taken in setting standards for diesel-fueled vehicles relative to standards for gasoline-fueled vehicles. Second, other than the type of fuel, methanol-fueled vehicles are expected to be similar in type, size, and function to their gasoline- and diesel-fueled counterparts. Hence, they generally should comply with the same emission standards. Third, the emission characteristics of methanol-fueled vehicles and those of current vehicles utilizing the same engine cycle (i.e., Otto or Diesel) should be sufficiently similar to allow the use of the same emission control technology that is used on vehicles produced today. Actually, the application of much of this technology to methanol-fueled vehicles should generally be less complex and costly. Fourth, because these pollutants are chemically identical regardless of the fuel used in the vehicle, this approach should provide equal protection to the environment regardless of the emission source. However, based on additional development work, EPA will consider the applicability of different standards (where allowed by statute) for methanol-fueled vehicles.

Smoke emissions from methanl-fueled vehicles do not appear to be a concern. The smoke levels associated with these engines are extremely low compared to current diesel engines. Therefore, EPA anticipates that no smoke standards will be necessary for methanol-fueled vehicles.

Setting particulate standards for methanol-fueled vehicles is slightly more comlex than that for CO and NO_x. The particulate levels of methanol engines appear to be well below those of current diesel engines. However, little is known of the chemical composition of the particulate from such engines and, thus, it may not be comparable to the composition of particulate from current engines. At the present time EPA does not expect to establish a particulate standard for methanol-fueled vehicles unless their composition is of particular concern. However, because of the high efficiencies of methanol-fueled engines, the Agency anticipates that methanol engines will be in direct competition with diesel engines and, therefore, is considering allowing manufacturers to include methanol-fueled engines/vehicles in their compliance determination for the corporate average diesel particulate standards. Of course, EPA welcomes comments on all these points.

The standard-setting approach for HC emissions (both exhaust and evaporative) may be even more complex. The HC standards for current vehicles set in the CAA were primarily intended to control ozone formation in the atmosphere. Methanol-fueled vehicles emit very small amounts of the types of hydrocarbons emitted by gasoline- and diesel-fueled vehicles. However, they do emit significant levels of unburned methanol and, to a lesser extent, aldehydes, both of which are oxygenated hydrocarbons. Methanol is less photochemically reactive than most hydrocarbons, but aldehydes are very photochemically reactive. Thus, while the existing HC standards might easily be met by methanol-fueled vehicles if the definition of hydrocarbons were restricted to those currently being emitted, it appears appropriate to have an additional standard for methanol-fueled vehicles to control oxygenated hydrocarbons.

There are several options available to control the oxygenated hydrocarbons from methanol-fueled vehicles. The simplest approach would probably be to apply the existing HC standards and measure "hydrocarbons" using the current HC analyzer (flame ionization detector) calibrated for methanol. This approach would essentially define hydrocarbons as methanol, plus traditional hydrocarbons. A second, fairly simple approach would be to accurately measure the important individual oxygenated hydrocarbons, as well as traditional hydrocarbons, and require that their combined level comply with the existing hydrocarbon standards. A more complex approach that is being considered would be to compare the relative photochemical oxidation potential of methanol engine exhaust to that of gasoline- or diesel-engine exhaust. The standards for methanol-fueled vehicles would then be set to ensure that emissions of oxygenated hydrocarbons caused no more ozone production than the allowable amount of HC emissions from current gasoline- and diesel-fueled vehicles. This approach might very well result in separate standards for unburned methanol and aldehydes.

An oxygenated HC standard would address the ozone-producing aspects of the emissions of methanol-fueled vehicles. However, there are other environmental concerns related to the organic compounds in the exhaust, particularly those of methanol and formaldehyde. A preliminary study has suggested that under extreme worst-case exposure scenarios, ambient concentrations of methanol might reach levels which raise concern about risks to the public health.[3] This analysis, along with all other data available, will be used to determine if a specific methanol standard is necessary. Of course, it is possible that the standards for CO and for oxygenated HC may provide sufficient control to eliminate the need for a specific methanol standard based on direct health effects.

Formaldehyde emissions from methanol-fueled vehicles also raise potential concerns about risks to the public health since they can be much greater than those from current vehicles. Formaldehyde is a strong irritant and has been shown to be a carcinogen in animals. A preliminary study on the toxic effects of this pollutant has also suggested that under extreme worst-case situations, ambient concentrations of formaldehyde might reach levels of concern.[4] Again, however, there may be no need for a separate formaldehyde emission standard due to control inherently provided by other emission stndards (e.g., CO, oxygenated HC).

III. Test Procedures

As mentioned above regarding emission standards, methanol-fueled vehicles are very similar to gasoline- and diesel-fueled vehicles in most respects. Thus, most of the established certification and emission test protocols of 40 CFR Parts 86 and 600 can be applied to methanol-fueled vehicles without change. Two areas where changes definitely will be required involve organic emission measurement instrumentation and fuel composition.

The current HC measurement instrument, the flame ionization detector (FID), appears to provide an inaccurate

[3] This document, entitled "Determination of a Range of Concern for Mobile Source Emissions of Methanol," is available for review in EPA Docket No. A-84-05.

[4] This document, entitled "Determination of a Range of Concern for Mobile Source Emissions of Formaldehyde Based Only on its Toxicological Properties," is available for review in EPA Docket No. A-84-05.

measure of oxygenated HC emissions from methanol-fueled vehicles. However, current FIDs are not calibrated for these emissions, so this could be part of the problem. Thus, it is not possible at this time to specify what type of analyzer (or method of analysis) may be required for oxygenated HC. If methanol or formaldehyde standards were necessary, new instrumentation would be needed for their measurement.

The final form of methanol when used as a transportation fuel is uncertain. It could have impurities (e.g., water) or include additives (e.g., isopentane for cold startability). For the purposes of emission and fuel economy testing, EPA expects to require the use of a methanol fuel which would be representative of that available in-use.

IV. Fuel Economy

Section 503(d)(2) of EPCA directs EPA to determine the amount of an alternative fuel that is equivalent to a gallon of gasoline, so that the gasoline-equivalent fuel economy of vehicles operating on such fuels can be determined. It is then the responsbility of the Department of Transportation to determine if such fuels should be included in the CAFE and fuel economy labeling programs (section 501(5) of EPCA). Because of differences in fuel characteristics, the fuel economies of methanol-fueled vehicles and gasoline-fueled vehicles are not directly comparable. Methanol has only about half the energy (or Btu) content of gasoline per unit volume. Therefore, when the fuel efficiencies of otherwise identical vehicles are directly compared in terms of miles per gallon, as is currently the case, methanol appears to be significantly less fuel efficient.

However, as pointed out above, methanol may actually be a more efficient transportation fuel than gasoline in terms of miles per Btu. Therefore, a direct comparison of methanol and gasoline, in terms of miles per gallon, would not only be counter to the fuel conservation intent of the EPCA, but could also adversely affect the development and sale of methanol-fueled vehicles. If included in the CAFE regulations under a direct comparison approach, these vehicles would adversely affect manufacturers' overall fuel economy ratings, thereby discouraging their production. This would be true even though the fuel cost per mile may be comparable because of methanol's inherent fuel efficiency and because the cost per gallon of this fuel should be cheaper than gasoline or diesel fuel. Therefore, the choice of a suitable fuel equivalency factor is important.

At the present time, the most straightforward way to determine the fuel equivalency factor for methanol appears to be to base it on the relative amounts of energy contained in methanol fuel and gasoline. In equation form, such a fuel equivalency factor (FEF) would be:

$$FEF = \frac{\text{Btu/gallon of gasoline}}{\text{Btu/gallon of methanol}}$$

The gasoline-equivalent fuel economy of a methanol-fueled vehicle would be the measured fuel economy in terms of miles per gallon of methanol times the fuel equivalency factor. Using lower heats of combustion, the fuel equivalency factor as defined above appears to be between 2.02 and 2.06. (The range is due to errors present when measuring heats of combustion.) The Agency would expect to use a nominal value of about 2.04.

However, the Agency invites comments on whether there are alternative ways to calculate an equivalency factor which would be appropriate for calculation of corporate average fuel economy (CAFE). For example, one alternative is to calculate fuel economy on the basis of miles per gallon of petroleum-derived fuel, rather than either a miles-per-gallon or miles-per-BTU basis, all fuels being considered. The purpose of the CAFE standards is to reduce dependence on foreign oil. To the extent that vehicles are fueled on methanol, vehicle miles are being travelled without any use of petroleum-based fuel.

V. Workshop and Request for Comments

The Agency will hold a workshop to provide an opportunity for the informal presentation and discussion of views regarding the subjects raised in this ANPRM. The time and place of the workshop is specified in the DATES and ADDRESSES sections of this notice.

To aid the Agency in preparing the proposed rule, we encourage comments on all aspects of emission standards and associated test procedures and on the proper fuel equivalency factor pertaining to methanol-fueled vehicles. In particular, responses are requested to the following questions:

1. What provisions of 40 CFR parts 86 and 600 may require revision, other than those associated with measurement instrumentation and fuel composition?
2. What should be the fuel specifications (chemical and physical) for methanol used in emission certification and fuel economy testing?
3. What is the most appropriate method for determining a methanol/gasoline equivalency factor?
4. What is the most appropriate standard-setting approach for controlling ozone precursors from methanol-fueled vehicles?
5. What are the highest levels of formaldehyde likely to be emitted from a methanol-fueled light-duty vehicle designed to comply with a 3.4 g/mi CO standard?
6. Are separate standards for formaldehyde and unburned methanol necessary to protect the public health and welfare?

In addition, comments are specifically requested on the two referenced "level of concern" reports which are available for review in the EPA docket.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Energy conservation, Electric power, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Authority:

Clean Air Act (sec. 202 (a), (b))

Dated: April 3, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-9368 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
April 10, 1984

Part III

Department of Health and Human Services

Office of Human Development Services

FY 1984 and FY 1985 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13655-841]

FY 1984 and FY 1985 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), Office of Human Development Services, HHS.

ACTION: Notice.

SUBJECT: Announcement of Opportunity for Indian Tribes To Apply for Grants for Supportive and Nutritional Services Under Title VI of the Older Americans Act.

SUMMARY: The Administration on Aging announces that applications will be accepted for grants under Title VI of the Older Americans Act, Supportive and Nutritional Services for Older Indians.

FOR FURTHER INFORMATION CONTACT: Mr. Michio Suzuki, Associate Commissioner for State and Tribal Programs, Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4282, 330 Independence Avenue SW., Washington, D.C. 20201, (202) 245-0011.

DATE: The closing date for receipt of applications is June 29, 1984.

1. Background and Program Purpose

Title VI was added to the Older Americans Act by the Amendments of 1978, and final regulations (45 CFR Part 1328) were published in the **Federal Register** July 18, 1980 (45 FR 48380-48395). The first grants were awarded to 85 Indian tribal organizations on September 30, 1980. The appropriation for each of the first two years was $6,000,000, and was $5,735,000 for the third and fourth years. Because current appropriations had not significantly increased, funding to existing grantees, and thus to older Indians whom they serve, would have had to be reduced before awards to additional grantees could be made. Therefore, as indicated in the preamble to the 1980 regulations, AoA continued to give first priority to those applicants that had successfully performed under a previous Title VI grant.

There have been inquiries from other interested Tribes which had not applied for funds in 1980, but which would now like to be considered for funding. Since additional funds have been requested for the program, it has been decided to invite applications from other eligible Tribes with the understanding that funding for new projects will be limited to: (1) The amount of funds remaining, if any, in the FY 1984 appropriation after funding grantees who submit approvable applications for continuation of currently approved projects; and (2) the amount of any additional funds appropriated in FY 1985 over the FY 1984 level of $5,735,000.

All applications received, both from currently funded grantees and new applicants, will be reviewed for approval in accord with the procedures and criteria described in this announcement.

The purpose of grants to Indian tribal organizations under Title VI is to promote the delivery of supportive services, including nutritional services, for older Indians that are comparable to services provided under Title III of the Older Americans Act. The primary goal of Title III is to provide supportive and nutritional services designed, in part, to "secure and maintain maximum independence and dignity in a home environment for older individuals." The unique characteristic of Title VI is that it is designed to accomplish these goals for older Indians.

2. Available Funds

Applications for Fiscal Year 1984 funds, for which $5,735,000 has been appropriated, will be accepted from current grantees and new applicants until June 29, 1984. AoA anticipates funding approximately 80 to 85 grants in FY 1984 in amounts ranging from $50,000 to $100,000. Priority will be given in FY 1984 and FY 1985 to funding current grantees who submit approvable requests for continued funding. Awards to new grantees will be made from any FY 1984 funds remaining after approved applications from current grantees have been funded. For FY 1985, awards to new grantees will be made from any additional funds appropriated during that fiscal year above the FY 1984 level of $5,735,000. The President has requested $7,500,000 for Title VI programs for FY 1985, but the actual amount of funds available for FY 1985 will not be known until an appropriation is signed into law. AoA anticipates funding 20 to 25 new projects in amounts ranging from $50,000 to $100,000, contingent upon final appropriation of the amount requested in the FY 1985 Budget.

3. Application Process

Application kits will be sent to the 83 current grantees. Tribes not currently funded under Title VI which are interested in applying should obtain an application kit from the Administration on Aging. The kit will include the "Instructions for Applying for Federal Assistance from HDS Programs," together with the necessary forms. New applicants should request a kit from: Mr. Michio Suzuki, Associate Commissioner for State and Tribal Programs; Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4228, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245-0011.

The closing date for all applications is June 29, 1984. One (1) signed original and two (2) copies of the application including all attachments must be submitted to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Department of Health and Human Services, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201, Attn: William J. McCarron.

Applications may be mailed or hand delivered. Hand delivered applications will be accepted Monday through Friday (except Federal Holidays) from 9:00 a.m. to 5:30 p.m. through June 29, 1984.

The office of Human Development Services will not accept for review any application received after 5:30 p.m. on June 29, 1984 unless it is postmarked no later than midnight June 25, 1984.

4. Eligibility of a Tribal Organization To Receive a Grant

To be eligible to receive a grant, a tribal organization must represent a federally recognized Indian Tribe and meet the three requirements in Section 602(a) of the Act:

A. Age of Older Indians

The tribal organization must represent at least 75 individuals who have attained 60 years of age or older (Note: Two or more Tribes may form a consortium to meet the requirement of representing at least 75 Indians age 60 or over). In order to meet this requirement, the application must indicate the number of members of the grantee Tribe, and of any other federally recognized Tribes, age 60 or over who live in the proposed Title VI service area, excluding spouses who are not elderly Indians.

B. Ability to Deliver Services

The tribal organization must demonstrate the ability to delivery supportive and nutrition services. In order to meet this requirement, the application must include a description of the Tribe's past experience in, or future

plans for, the delivery of supportive and nutrition services. Currently funded grantees will normally cite their past experience under title VI; new applicants may describe services formerly or currently being provided with other funds, or their plans to begin service delivery.

C. Non-Overlapping Between Titles III and VI of the Older Americans Act

The applicant must assure that individuals to be served by the tribal organization will not receive, for the period for which application under this Title is made, services under Title III.

5. Content of the Application

In order to receive funding under this program announcement, all tribal organizations must submit a full application, including those tribal organizations currently funded under Title VI. Applications for continuation grants in future years generally will be required to report only significant changes from prior information submitted.

Section 604(a) of the Older Americans Act lists eleven requirements or assurances which the application must contain in order to be approved. In addition, the regulations at 45 CFR part 1328 require additional information and assurances.

Any narrative information required for any part of the application may be supplied in any form convenient to the tribal organization.

The basic application form is the Form SF–424. The application kit contains instructions for filling out the SF–424, including a form entitled "Instructions for Completing the Program Narrative," for Form SF–424, Part IV. This instruction form, which has been approved by OMB for use through 9–30–86, contains all the statutory requirements and provides an optional suggested format for submitting this information. The application kit will also contain a copy of the regulations and a list of regulation requirements that must be met.

6. Determination of Funding Levels for Projects

In view of the limited amount of funding available, and the extent of need which exists among the older Indian population, it is critical that applicants carefully describe in their applications the ways in which Title VI funds will be used to address the most critical needs of the older Indian population to be served through their project. Section 604(a) of the Older Americans Act requires that, prior to submission of a Title VI application, each applicant evaluate the need for social and nutrition services among the older Indians who will be served by the tribal organization. Applicants must include in their application the results of this evaluation of needs (needs assessment), the degree to which other resources (including in-kind and other tribal resources) are available to meet those needs, and the methods which will be used to assure that Title VI funds will be used with maximum efficiency and effectiveness in meeting critical needs. Budget requests must clearly reflect the information presented in this description. Funding levels for approved projects will be determined after consideration is given to the information described above as well as the following fctors:

a. *For currently funded applicants,* primary consideration will be given to maintaining the current level of services designed to meet the most critical needs of older Indians in the planning and service area. Consideration also will be given to any change which has occurred in the size of the population of Indians age 60 and over in the Title VI service area since initial funding of the project. Such applicants also may apply for awards above or below their previously approved levels with the understanding that the availability of funds to expand current projects will be very limited. In doing so, applicants should clearly describe the additional activities they will be able to provide if they receive additional funds in the amounts requested. This description should include the types and costs of additional services to be provided, the estimated additional number of older Indians to be served (if any), and how these additional funds will be used to meet the most critical needs of the population to be served.

b. *For new applicants,* budget requests will be reviewed in terms of the types and costs of services to be provided in meeting the most critical needs of the population to be served, and the number of older Indians to be served. A primary consideration in determining the appropriate level of funding for new projects will be the level of funding approved for currently funded projects of similar size and scope.

7. Action on Applications

Funds available in FY 1984 and FY 1985 will be used in the following manner:

1. Applications from currently funded grantees, if approved again, will be funded from the $5,735,000 available in FY 1984.

2. Applications for new projects will be funded from any amounts remaining in FY 1984 after funding currently funded projects, and from any amounts available in FY 1985 above the FY 1984 appropriation level of $5,735,000. The President's FY 1985 Budget includes a request of $7,500,000 for the Title VI program.

3. Budget periods for approved projects will be for one year. Project periods will be for three years.

Successful applicants funded from FY 1984 funds will be announced during the fourth quarter of FY 1984 (July–September 1984). Successful applicants funded from additional funds available in FY 1985 will be announced when those additional funds become available. Awards will be made through the issuance of a Notice of Financial Assistance Awarded from the Office of Human Development Services. This Notice will set forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, and the project period.

A tribal organization must notify the area agency(ies) and the State Agency on Aging in the planning and service area(s) of its intent to apply for and of its receipt of a grant under Title VI.

8. Cooperative Management Initiative (CMI)

The CMI is an Office of Human Development Services (HDS) management initiative to strengthen local coordination and enhance the efficiency of HDS supported Indian programs by reducing the administrative burden associated with administering multiple HDS grants, and encouraging grantee management improvements and joint use of facilities.

All eligible Indian Tribes are strongly encouraged to join in this cooperative effort. Eligible Tribes are those which have grants from two or more HDS programs, i.e., Head Start grants from the Administration for Children, Youth and Families; Social and Economic Development grants from the Administration for Native Americans; and Title VI grants from the

Administration on Aging. Indian Tribes that are currently participating in CMI or that are interested in joining CMI should indicate their intent in the narrative portion of their application. For further information on CMI, contact: Bernice Harris, CMI Coordinator, Office of Human Development Services, Department of Health and Human Services, North Building, Room 5323, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245-7730.

Dated: March 27, 1984.

Lennie-Marie P. Tolliver, Ph.D.,

Commissioner on Aging.

Dated: April 3, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 84-9502 Filed 4-9-84; 8:45 am]

BILLING CODE 4130-01-M

federal register

Tuesday
April 10, 1984

Part IV

Department of the Interior

Office of the Secretary

48 CFR Ch. 14
Acquisition Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Ch. 14

Department of the Interior Acquisition Regulation (DIAR)

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule contains the Department of the Interior Acquisition Regulation (DIAR) which implements and supplements the Federal Acquisition Regulation (FAR). The DIAR will replace the current Interior Procurement Regulations (41 CFR 14) on April 1, 1984.

The proposed rule was published on February 13, 1984 (49 FR 5472–5496).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: William Opdyke, Chief, Branch of Policy and Regulations, Division of Acquisition and Grants, Office of Acquisition and Property Management, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION:

Explanation

The acquisition regulations under this rulemaking action contain only those Department-wide policies, procedures, contract clauses, and solicitation provisions which directly govern the contracting process or control the relationship between the Department's bureaus and offices and contractors or prospective contractors. Internal guidance involving designations, delegations of authority, administrative procedures, and reporting requirements necessary to implement the FAR within the Department is not contained in this action since such guidance is not required to be published in the **Federal Register** pursuant to FAR 1.301(b).

Since the DIAR implements and supplements the FAR, which is to be effective on April 1, 1984, it is necessary for the DIAR to be effective on the same date, rather than the usual thirty days after publication in the **Federal Register**.

Comments

Comments were requested by March 14, 1984. No comments were received from the public. Some internal comments were received which will result in a few minor changes to the text. However, there are no significant differences between the proposed rule and the final rule.

Primary Author

The primary author of this rule is William Opdyke, Office of Acquisition and Property Management, telephone (202) 343–3433.

Executive Order 12291 and Regulatory Flexibility Act

The Director, Office of Management and Budget has exempted agency procurement regulations from the requirements of Executive Order 12291 by memorandum dated December 15, 1983. The Department has certified that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Ch. 14

Government procurement.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is published as set forth below pursuant to the authority of the Secretary of the Interior contained in Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Dated: April 4, 1984.

Joseph E. Doddridge,

Deputy Assistant Secretary of the Interior.

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 14 to read as follows:

CHAPTER 14—DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL

Part 1401—Department of the Interior Acquisition Regulation System
Part 1403—Improper Business Practices and Personal Conflicts of Interest
Part 1404—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1407—Acquisition Planning
Part 1409—Contractor Qualifications
Part 1410—Specifications, Standards and Other Purchase Descriptions

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1413—Small Purchases and Other Simplified Purchase Procedures
Part 1414—Formal Advertising
Part 1415—Contracting by Negotiation

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1419—Small Business and Small Disadvantaged Business Concerns
Part 1420—Labor Surplus Area Concerns
Part 1424—Protection of Privacy and Freedom of Information
Part 1425—Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1428—Bonds and Insurance
Part 1432—Contract Financing
Part 1433—Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 1436—Construction and Architect—Engineering Contracts
Part 1437—Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1442—Contract Administration

SUBCHAPTER H—CLAUSES AND FORMS

Part 1452—Solicitation Provisions and Contract Clauses
Part 1453—Forms

SUBCHAPTER A—GENERAL

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.1—Purpose, Authority, Issuance

Sec.
1401.105 OMB approval under the Paperwork Reduction Act.

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.
1401.302 Limitations.
1401.303 Codification and public participation.
1401.304 Agency control and compliance procedures.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.
1401.602 Contracting officers.
1401.602–1 Authority.
1401.603 Selection, appointment and termination of appointment.
1401.603–1 General.
1401.670 Appointment and termination of appointment of contracting officers' representatives.
1401.670–1 General.
1401.670–2 Appointment.
1401.670–3 Limitations.
1401.670–4 Termination.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1401.1—Purpose, Authority, Issuance

1401.105 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The following OMB control numbers:

DIAR segment	OMB control No.
1452.204–72	1084–0019
1452.210–70	1084–0017
1452.225–70	1084–0018

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.

(a) Subject to the authorities in (c) below, the Department issues acquisition regulations which implement or supplement the FAR under the Department of the Interior Acquisition Regulations (DIAR) System. The regulations, as part of the FAR system, are issued in accordance with the policy in FAR 1.301(a).

(b) Subject to the authorities in (c) below, the Department also issues internal guidance and instructions under the DIAR System in accordance with the policy in FAR 1.301(b).

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary—Policy, Budget and Administration under Part 209, Chapter 4.1A of the Departmental Manual (209 DM 4.1A).

1401.302 Limitations.

DIAR System regulations and internal guidance conform to the limitations in FAR 1.301 and consist of—

(a) Published and codified Department-wide regulations which implement or supplement FAR policies and procedures and directly govern the contracting relationship between the Department's bureaus and offices and existing or potential contractors;

(b) Published and codified bureau-wide regulations which supplement FAR policies and procedures and govern the relationship between a bureau and existing or potential contractors to satisfy specific and unique needs of the particular bureau;

(c) Unpublished Department-wide internal guidance related to administrative implementation of FAR policies and procedures which does not directly affect existing or potential contractors; and

(d) Unpublished bureau-wide internal guidance which is necessary for administrative implementation of FAR or DIAR System requirements at organizational levels.

1401.303 Codification and public participation.

(a) Implementing and supplementing regulations issued under the DIAR System are codified under Chapter 14 in Title 48, Code of Federal Regulations and conform to the requirements in FAR 1.303.

(b) Department-wide regulations (see 1401.302(a)) are assigned Parts 1401 through 1479 under 48 CFR.

(c) Bureau-wide regulations (see 1401.302(b)) are assigned Parts 1480–1499 under 48 CFR as follows—

1480–1481 Bureau of Indian Affairs
1482 Office of the Secretary
1483 Bureau of Reclamation
1484 Bureau of Land Management
1485 Bureau of Mines
1486 Geological Survey
1487 Office of Surface Mining
1488 Minerals Management Service
1489 National Park Service
1490 Fish and Wildlife Service
1491–1499 [Reserved]

(d) Public participation in the promulgation of the acquisition regulations which are published in the **Federal Register** shall follow the Department's rulemaking procedures prescribed in Part 318, Chapter 6 of the Departmental Manual (318 DM 6) and the procedures in FAR Subpart 1.5.

(e) Copies of Department-wide and bureau-wide acquisition regulations and Department-wide internal guidance may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

1401.304 Agency control and compliance procedures.

(a) The DIAR system is under the direct oversight and control of the Director, Office of Acquisition and Property Management, who is responsible for review and preparation for issuance of all Department-wide and bureau-wide acquisition regulations published in the **Federal Register** to assure compliance with FAR Part 1. Review procedures are contained in Part 401 of the Departmental Manual (401 DM).

(b) The Director, Office of Acquisition and Property Management is also responsible for review and issuance of unpublished, Department-wide internal guidance under the DIAR System.

(c) Heads of contracting activities are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished bureau-wide internal guidance issued to implement FAR or DIAR requirements. These procedures shall be reviewed and approved by the Director, Office of Acquisition and Property Management and shall include—

(1) Provisions for centralized issuance of all guidance and instructions using a directives system;

(2) Methods for periodic review and updating of all issuances;

(3) Distribution processes which assure timely receipt by all affected contracting offices; and

(4) Provisions for maintaining compliance with FAR 1.304.

(d) The Director, Office of Acquisition and Property Management is responsible for evaluating coverage under the DIAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.

(a) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to Assistant Secretaries.

(b) The contracting authority and responsibility delegated to Assistant Secretaries may be redelegated to heads of bureaus and offices under their supervision in accordance with Part 200, Chapter 3 of the Departmental Manual (200 DM 3). Such redelegations are published in bureau chapters of the Part 200 series of the Departmental Manual.

(c) Bureau heads and assistant or associate heads thereof (known as heads of contracting activities as defined in 1402.1) may redelegate contracting authority only as prescribed in 1401.603.

1401.602 Contracting officers.

1401.602-1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of the contracting activity as required in FAR 1.602-1. The Office of Acquisition and Property Management shall also maintain this information.

1401.603 Selection, appointment and termination of appointment.

1401.603-1 General.

Heads of contracting activities (see 1402.1) are authorized to select and appoint contracting officers and terminate their appointment as prescribed in the Department's "Contracting Officers' Warrant System Manual". Copies of the manual may be obtained upon request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

1401.670 Appointment and termination of appointment of contracting officers' representatives.

1401.670-1 General.

A contracting officer may select and appoint an individual to act as an authorized representative in the administration of a contract based on the technical, professional and administrative qualifications of the individual.

1401.670-2 Appointment.

(a) Contracting officers' representatives shall be appointed in writing by the contracting officer. The appointment shall state the scope and limitations of authority (see 1401.670-3) and identify the contract(s) which the representative will administer.

(b) Changes in the scope or limitations of authority shall be made by written amendments to the existing appointment or by issuance of a new appointment.

(c) A copy of the appointment shall be promptly forwarded to the contractor after issuance by the contracting officer.

1401.670-3 Limitations.

Each appointment of a contracting officers' representative made by the contracting officer shall clearly state that the representative is not authorized under any circumstances to—

(a) Award, agree to, or execute any contract, contract modification, or notice of intent;

(b) Obligate, in any way, the payment of money by the Government;

(c) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or

(d) Terminate, for any cause, the contractor's right to proceed.

1401.670-4 Termination.

Termination of a contracting officer's representative appointment shall be made in writing by the contracting officer and shall state the date such termination is effective. A copy of the termination shall be promptly forwarded to the contractor after issuance by the contracting officer.

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

Sec.
1403.101 Standards of conduct.
1403.101-3 Agency regulations.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.
Sec.
1403.203 Procedures.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1403.1—Safeguards

1403.101 Standards of conduct.

1403.101-3 Agency regulations.

Department of the Interior regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR Part 20. Authorized exceptions to FAR 3.101-2 are contained in 43 CFR 20.735-7 and 20.735-8.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

1403.203-70 Procedures.

(a) *Action Official.* The Director, Office of Acquisition and Property Management, is the Departmental official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203-3, Gratuities, has occurred. This authority may not be delegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203-3, Gratuities, becomes known to a Department employee, the matter shall be reported to the cognizant contracting officer or the contracting officer's supervisor, as appropriate. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidents where it is alleged that the contractor offered or gave a gratuity to a Department employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s) and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Office of Acquisition and Property Management for disposition.

(c) *Notice to contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall determine further action to be taken. If required, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail return receipt requested.

(d) *Decision.* Based on the contractor's response to the notice, the results of any further discussion with the contractor, its counsel or witnesses, the review of additional documentary evidence, and other pertinent information, the Director, Office of Acquisition and Property Management shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action. If the decision involves termination of a contract (see FAR 3.204(c)(1)) the head of the contracting activity shall be responsible for implementing the decision.

PART 1404—ADMINISTRATIVE MATTERS

Subpart 1404.4—Safeguarding Classified Information Within Industry

Sec.
1404.402 General.

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.
1404.702 Applicability.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.
1404.804-70 Release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.
1404.7001 Definitions.
1404.7002 Statutory requirements.
1404.7003 Applicability and contract clause.
1404.7004 Compliance enforcement.
1404.7005 Tribal preference requirements.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and 5 U.S.C. 301.

Subpart 1404.4—Safeguarding Classified Information Within Industry

1404.402 General.

(a) The Department of the Interior has entered into an agreement with the Department of Defense (DOD) to be covered by the Defense Industrial Security Program (DISP). The agreement is contained in Appendix 1, Part 443, Chapter 1 of the Department Manual (443 DM 1).

(b) Classified acquisitions or contracts (see FAR 4.401) shall be subject to the instructions contained in the DOD publications listed in FAR 4.402(b).

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.

This subpart contains additional record retention requirements of the Department of the Interior.

1404.702 Applicability.

In addition to the clauses listed under FAR 4.702(a), FAR Subpart 4.7 shall apply to records generated under contracts containing the clause at 1452.215–70, Examination of Records by the Department of the Interior.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.

1404.804–70 Release of claims.

(a) The contracting officer shall insert the clause at 1452.204–70, Release of Claims, in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000. A release of claims clause may be inserted in other types of contracts when the contracting officer determines that the release is necessary to protect the interests of the Government.

(b) Form DI–137, Release of Claims (see 1453.204–70), shall be used for obtaining a release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementation of section 7(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

1404.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

"Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

"Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

"Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

"Indian Tribe" means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"On or near an Indian reservation" means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

1404.7002 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or subcontract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible, (a) preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and (b) preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93–262; 88 Stat. 77; 25 U.S.C. 1452).

1404.7003 Applicability and contract clause.

(a) The contracting officer shall insert the clause at 1452.204–71, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by (1) the Bureau of Indian Affairs, except solicitations issued and contracts awarded pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93–638 (25 U.S.C. 450 et seq., and 25 U.S.C. 455 et seq., respectively), (2) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and (3) a contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The contracting officer shall insert the clause at 1452.204–72, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed $50,000, which contain the clause required by paragraph (a) above and where it is determined by the contracting officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000, but which contain the clause required by paragraph (a) above and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training or subcontracting.

1404.7004 Compliance enforcement.

(a) The contracting officer is responible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1404.7003. There reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1404.7003 which are received in writing by the contracting activity shall be promptly investigated by the contracting officer and a written disposition of the complaint shall be prepared.

1404.7005 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting officer may supplement the clause at 1452.204–72, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting officer and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Pub. L. 93–638 and must be approved by the

Office of the Solicitor for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.204-72 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in (a) above, become a requirement in contracts covered under this subpart 1404.70 and must not hinder the Government's right to award contracts and to administer their provisions.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1407—ACQUISITION PLANNING

Subpart 1407.3—Contractor Versus Government Performance

Sec.
1407.302 General.
1407.307 Appeals.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1407.3—Contractor Versus Government Performance

1407.302 General.

The Department has implemented the requirements of OMB Circular A-76 and FAR Subpart 7.3 in Part 403 of the Departmental Manual (403 DM).

1407.307 Appeals.

The Department's appeals procedures required by OMB Circular A-76 and FAR 7.307 are codified in 43 CFR Part 4, Subpart M.

PART 1409—CONTRACTOR QUALIFICATIONS

Subpart 1409.4—Debarment, Suspension and Ineligibility

Sec.
1409.400 Scope of subpart.
1409.404 Consolidated list of debarred, suspended and ineligible contractors.
1409.405 Effect of listing.
1409.405-1 Continuation of current contracts.
1409.406 Debarment.
1409.406-1 General.
1409.406-3 Procedures.
1409.407 Suspension.
1409.407-1 General.
1409.407-3 Procedures.

Authority: 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1409.4—Debarment, Suspension and Ineligibility

1409.400 Scope of subpart.

As required by FAR 9.402(c), this subpart prescribes Departmental policies and procedures governing the debarment and suspension of contractors, the listing of the debarred and suspended contractors, and dissemination of this listing.

1409.404 Consolidated list of debarred, suspended and ineligible contractors.

(a) The Division of Acquisition and Grants, Office of Acquisition and Property Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) Monthly issues of the consolidated list shall be disseminated by the heads of contracting activities to all contracting offices after receipt from GSA.

(c) Weekly supplements to monthly lists shall be furnished to each bureau headquarters office by the Division of Acquisition and Grants, Office of Acquisition and Property Management. Each bureau shall maintain list supplements at a central location and issue instructions requiring contracting officers to contact this location in order to obtain current information and ensure effective use of the list as required by FAR 9.405.

1409.405 Effect of listing.

The Director, Office of Acquisition and Property Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management.

1409.405-1 Continuation of current contracts.

The Director, Office of Acquisition and Property Management, is authorized to take action listed in FAR 9.405-1.

1409.406 Debarment.

1409.406-1 General.

(a) The Director, Office of Acquisition and Property Management is the debarring official for the Department and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 1409.406-3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding debarment by another agency debarring official under the conditions in FAR 9.406-1(c).

1409.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Office of Acquisition and Property Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.406-3(b)(2)(i). The hearing shall be conducted by the Director, Office of Acquisition and Property Management, or designee, and shall be held at a location convenient to the parties concerned as determined by the Director and on a date and time stated. Subject to the provisions of 43 CFR Part 1, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Director, Office of Acquisition and Property Management shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d) and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406-3(e).

1409.407 Suspension.

1409.407-1 General.

(a) The Director, Office of Acquisition and Property Management is the suspension official for the Department and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 1409.407-3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

1409.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.407-2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for suspension to the Director, Office of Acquisition and Property Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.407-3(b)(2)(i). The hearing shall be conducted under the conditions in 1409.406-3(c).

(d) *Suspension decision.* The Director, Office of Acquisition and Property Management shall make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.407-3(d)(4).

PART 1410—SPECIFICATIONS, STANDARDS AND OTHER PURCHASE DESCRIPTIONS

Sec.

1410.004 Selecting specifications or descriptions for use.
1410.004-70 Brand name products or equal.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1410.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet their requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 1410.004-70.

(c) Bureaus and offices shall be responsible for requiring adequate packing, packaging, and marking requirements when acquiring supplies in accordance with FAR 10.004(e).

1410.004-70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Solicitation requirements.* (1) "Brand name or equal" purchase descriptions in solicitations shall identify salient characteristics of the product (see subparagraph (b)(2) of this 1410.004-70) and contain the following information to describe the specific item—

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, bidders/offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the brand name or equal product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be separately identified under the heading of "salient characteristics" and included in the purchase description contained in the solicitation so the bidder/offeror understands the information to be submitted when offering an "equal" product for evaluation. In addition, the following statement shall be included at the end of each "brand name or equal" description in a solicitation for a bidder/offeror to identify its "equal" product:

Bidders/Offerors (select one) proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on/proposing:
Manufacturer's name: _____
Address: _____
Product name (if any): _____
Product make, model, or catalog description:

_____

Bidders/offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

(3) In addition, the provision at 1452.210-70, Brand Name or Equal—Department of the Interior, shall be inserted by the contracting officer in solicitations where a "brand name or equal" purchase description is used.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1413.1—General

Sec.

1413.103 Policy.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1413.1—General

1413.103 Policy.

Small purchases and other simplified purchase methods shall be conductd in accordance with FAR Part 13 and the Department's "Sources of Supply and Small Purchase Handbook" or equivalent bureau procedures approved by the Director, Office of Acquisition

and Property Management. Copies of the Handbook may be obtained upon written request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

The Department of the Treasury has approved for the Department dollar limits other than those in FAR 13.404(a) for small purchase transactions using imprest funds. Imprest funds may be used for small purchases when the transaction does not exceed $300 under normal conditions or $500 under emergency conditions.

PART 1414—FORMAL ADVERTISING

Subpart 1414.4—Opening of Bids and Award of Contract

Sec.
1414.406 Mistakes in bid.
1414.406–3 Other mistakes disclosed before award.
1414.407 Award.
1414.407–8 Protest against award.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1414.4—Opening of Bids and Award of Contract

1414.406 Mistakes in bids.

1414.406–3 Other mistakes disclosed before award.

(a) The Director, Office of Acquisition and Property Management is authorized to make the administrative determinations under FAR 14.406–3, except as set forth in (b) below.

(b) If a bidder requests permission to withdraw a bid rather than correct it, and (1) the evidence is clear and convincing as to the mistake or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the chief of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review in accordance with bureau procedures and concurrence by the appropriate Office of the Solicitor. (See FAR 14.406–3 (c) and (e).) Copies of all determinations made pursuant to this authority must be promptly transmitted to the Director, Office of Acquisition and Property Management. If the evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with (d) below.

(c) As required by FAR 14.406–3(f), each proposed administrative determination shall have the concurrence of the Office of the Solicitor prior to submission to the Director, Office of Acquisition and Property Management.

(d) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406–3(g). Except as prescribed in (b) above, the contracting officer shall submit a report together with the supporting data described in FAR 14.406–3(g)(3) through the head of the contracting activity to the Director, Office of Acquisition and Property Management. Incomplete reports may result in a delay in obtaining a determination.

(e) The Director, Officer of Acquisition of Property Management is responsible for maintaining records of administrative determinations as required in FAR 14.406–3(h).

1414.407 Award.

1414.407–8 Protests against award.

(a) *Responsibility.* The Office of the Solicitor shall be responsible for handling bid protests lodged with the General Accounting Office (GAO). All communications relative to protests at the GAO shall be coordinated with the Assistant Solicitor for Procurement and Patents.

(b) *Determination to make award.* (1) If a written protest before award has been lodged with the contracting activity only, the appropriate procedures of FAR 14.407–8 (a) and (b) shall be followed. Prior to making an award of a contract under the circumstances in FAR 14.407–8(b)(4), the contracting officer shall obtain the advice of the Assistant Solicitor for Procurement and Patents.

(2) If a protest before award has been lodged directly with the GAO and the contracting officer determines in writing that it is necessary to make an award under the circumstances in FAR 14.407–8(b)(4), such determination must be submitted by the head of the contracting activity concerned to the Director, Office of Acquisition and Property Management for approval before award of the contract. The Director, Office of Acquisition and Property Management shall be responsible for coordination with GAO as required in FAR 14.407–8(b)(3).

(c) *Notice of protest.* Upon being advised by the GAO of the receipt of a protest before or after award, the Office of the Solicitor shall inform the appropriate contracting activity which shall immediately notify the contracting officer. As required by FAR 14.407–8(a)(3), the contracting officer shall then promptly notify all interested persons, including bidders (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been lodged with the GAO and the basis for the protest. A written record of such telephonic notices shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Solicitor will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer and request a written report. The contracting officer shall promptly transmit by letter a copy of the protest to all interested persons previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the Assistant Solicitor for Procurement and Patents. Cover letters shall contain the advice contained in FAR 14.407–8(a)(3), including instructions that any comments submitted to GAO should also be submitted to the contracting officer and the Assistant Solicitor for Procurement and Patents.

(d) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 working days after receipt by the Office of the Solicitor of the GAO's request for an administrative report, such report or a statement setting forth the reasons for delay and the expected date of submission shall be submitted to the GAO. The contracting activity shall have no more than 15 working days from receipt of the request for an administrative report from the Office of the Solicitor to deliver such report to the Assistant Solicitor for Procurement and Patents.

(2) The administrative report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; shall include the documents and statements required by FAR 14.407–8(a)(2), and shall be signed by the contracting officer or representative. Reports shall be prepared with the assistance of the local attorney-advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and four complete copies of the

contracting officer's report to the Assistant Solicitor for Procurement and Patents, plus one complete copy for each interested person. Contracting officers shall assure that no trade secrets or commercial or financial information which is privileged or confidential is disclosed to unauthorized parties. Transmittal letters forwarding the report to the GAO and to interested persons shall be prepared by the Office of the Solicitor. All reports to GAO shall be reviewed and surnamed by the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, prior to submittal to GAO within three working days of receipt from the Office of the Solicitor.

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.1—General Requirements for Negotiation

Sec.

1415.106 Contract clauses.
1415.106–1 Examination of records by the Department of the Interior clause.

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.
1415.413–70 Department of the Interior procedures.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency Procedures.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.

Subpart 1415.8—Price Negotiation

1415.803 General.
1415.804 Cost or pricing data.
1415.804–3 Exceptions from or waiver of submission of certified cost or pricing data.

Subpart 1415.9—Profit

1415.902 Policy.
1415.905 Profit analysis factors.
1415.905–1 Common factors.
1415.905–70 Calculation of profit objective.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1415.1—General Requirements for Negotiation

1415.106 Contract clauses.

1415.106–70 Examination of records by the Department of the Interior clause.

The contracting officer shall insert the clause at 1452.215–70, Examination of Records by the Department of the Interior, in all contracts requiring the clause a FAR 52.215–1, Examination of Records by the Comptroller General, as prescribed in FAR 15.106–1(b).

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.

1415.413–70 Department of the Interior procedures.

(a) *General.* This section establishes alternate requirements and procedures, which shall be used instead of those prescribed in FAR 15.413, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) *Definitions.* For the purposes of this section and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meanings set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities.

(2)(i) "Confidential commercial or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act (5 U.S.C. 552).

(ii) Exemptions from mandatory disclosure which may be applicable to business information contained in proposals includes exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(c) *Marking of solicited proposals.* A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, perfers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors shall mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at 1452.215–71, Use and Disclosure of Proposal Information—Department of the Interior. Contracting officers and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(d) *Use of information.* (1) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(2)(i) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to an offeror's view that the information constitutes trade secrets or confidential commercial or financial information.

(ii) The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(e) *Failure to mark.* The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraph (c) of this section. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraph (c) of this section, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(f) *Solicitation provision.* The provision at 1452.215–71, Use and Disclosure of Proposal Information—

Department of the Interior shall be inserted in all requests for proposals and requests for quotations.

(g) *Government handling notice.* The following Government notice shall be placed by the contracting officer on the cover page of each solicited proposal upon receipt in order to ensure proper handling. This is a Government notice for internal handling purposes and does not affect any obligations or rights of the Government may have with regard to the use or disclosure of information contained in the proposal or quotation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any restrictive legends used by the offeror to mark trade secrets or confidential commercial or financial information in accordance with solicitation provision, "Use and Disclosure of Proposal Information—Department of the Interior", shall also be strictly complied with.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency procedures.

Procedures for the disposition of unsolicited proposals as required by FAR 15.506 are contained in the Department's "Handbook for Submission of Unsolicited Proposals". Copies of the handbook may be obtained upon request from the Office of Acquisition and Property Management, Department of the Interior, Washington, D.C. 20240.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.

The head of the contracting office is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) after approval of the determination by the Office of the Solicitor has been obtained.

Subpart 1415.8—Price Negotiation

1415.803 General.

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the head of the contracting activity or designee at a level higher than the contracting officer, for final resolution.

(b) Resolution under (a) above shall be documented, signed by the head of the contracting activity or designee, and included in the contract file.

1415.804 Cost or pricing data.

1415.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The chief of the contracting office is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804-3(b)(2)(iii).

(b) The Director, Office of Acquisition and Property Management is authorized to waive the requirement for submission of certified cost or pricing data. (See FAR 15.804-3(i).)

(c) Requests for waiver under (b) above shall be submitted in writing by the head of the contracting activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

Subpart 1415.9—Profit

1415.902 Policy.

(a) It is the Department's policy to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905, as implemented and supplemented in 1415.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach in 1415.905, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions—

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Cost-plus-award-fee contracts.

(c) In developing a profit or fee objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205-10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective (see 1415.905-1(a)(5) and 1415.905-70(b)(1)).

(e) The head of the contracting activity is responsible for establishing procedures to ensure compliance with this subpart.

1415.905 Profit-analysis factors.

(a) The Department uses the factors listed in FAR 15.905-1 in its structured approach. 1415.905-1 contains additional guidance on evaluating each factor and subfactor for purposes of determining a weighted profit or fee for the factor or subfactor.

(b) The Department has added another subfactor to those prescribed for contractor effort in FAR 15.905-1(a). This subfactor, "other costs", is described under 1415.905-1(a)(5).

(c) Procedures for calculating profit or fee prenegotiation objectives are prescribed in 1415.905-70.

(d) Form DI-1920, Structured Approach for Profit/Fee Objective—Department of the Interior (1453.215-17), shall be used to facilitate the calculation of the profit or fee objective.

1415.905-1 Common factors.

The following guidance supplements the policy prescribed for profit-analysis factors in FAR 15.905-1. Weight ranges are prescribed for each factor or subfactor, as appropriate, for use in evaluating and calculating the specific weighted profit or fee objective (see 1415.905-70).

(a) *Contractor effort.* This factor measures the prospective contractor's contribution to the overall effort to meet contract performance requirements in an efficient and cost-effective manner. Considerations include the resources necessary for the prospective contractor to accomplish the conversion of labor and materials into the required contract items, the difficulty or complexity of the work to be performed, and the degree to which the contract requires a new approach or technique to be utilized for successful performance. This factor requires an analysis of the cost content of subfactors in FAR 15.905-1(a) as supplemented below, and includes an additional subfactor covering other costs. These subfactors may be modified, as necessary, to maintain consistency with cost categories used by prospective contractors. Any amount proposed for cost of money for facilities capital and allowable under FAR 31.205-10 shall be deducted from the cost base objective used for calculating the profit objective as prescribed in 1415.905-70.

(1) *Material acquisition (1 to 4%).* In evaluating the prospective contractor's managerial and technical effort under this subfactor, consideration shall also include (i) how the purchasing and subcontracting programs will contribute to the performance of the contract, and (ii) the extent of competition to be achieved in the award of subcontracts.

(2) *Conversion of direct labor (4 to 12%).* In evaluating the contribution of direct labor, considerations include (i) the amount of scientific or unusual or scarce engineering expertise needed in

comparison to journeyman labor or supporting personnel, (ii) the diversity (or lack thereof) of scientific and engineering disciplines required for contract performance and the corresponding need for engineering supervision and coordination, (iii) the quality of professional or engineering type skills required for service contract labor in comparison to semi-professional or other type skills to be employed, and (iv) the variety and complexity of manufacturing and other types of related skills and experience required and the prospective contractor's resources for meeting these requirements.

(3) *Conversion-related indirect costs (3 to 8%).* Elements of overhead and other indirect items of expense of the prospective contractor shall be individually analyzed to determine the extent to which they directly contribute to the conversion of labor and materials into the contract items.

(4) *General management (4 to 8%).* In evaluating the prospective contractor's other indirect costs and G&A expense, consideration shall include the degree to which management problems may occur during contract performance and the management expertise which may be required to resolve them.

(5) *Other costs (1 to 3%).* This subfactor, which is not included under FAR 15.905–1, measures the contribution of all other direct costs including travel, direct support, and hiring of consultants to contract performance. Any amount proposed for facilities capital cost of money and allowable under FAR 31.205–10 shall be subtracted from the cost objective established for this subfactor and shall not be considered in the cost base used for calculating the profit objective (see 1415.905–70(b)(1)).

(b) *Contract cost risk (0 to 7%).* This factor is measured by evaluating the cost risk in terms of the degree of cost responsibility the prospective contractor assumes, the reliability of the cost estimates in relation to type of work under the contract, and the complexity of the work to be performed. Consideration shall also be given the degree to which the prospective contractor's subcontracting program may transfer real cost risk to subcontractors.

(1) *Cost reimbursement contracts (0 to 3%).* Generally, a cost-plus-fixed-fee contract would not justify compensation for risk in excess of 0%, unless the contract contains cost risk features such as overhead ceilings where ½ to 1% may be justified. Cost-plus-incentive fee contracts may justify weightings of 1 to 3% depending on target cost reliability, the share ratio of the fee, and whether cost incentives or multiple incentives are involved.

(2) *Fixed-price contracts (3 to 7%).* The range of weightings for fixed-price contracts is wide to accommodate the many types of fixed-price arrangements and the varying cost risks associated with these arrangements. Generally, a firm fixed-price contract for complex work involving a critical performance schedule would justify a weighting near the top of the range.

(c) *Federal socioeconomic programs (−.5 to +.5%).* This factor measures the extent of the prospective contractor's successful participation and proposed positive actions in support of Federal socioeconomic programs, including women-owned business programs. The prospective contractor's policies and procedures which display unusual initiative in support of socioeconomic programs and have achieved successful results shall be given a positive weighting. A failure or unwillingness on the part of the prospective contractor to support these programs shall be considered inadequate performance and shall result in a corresponding weighting.

(d) *Capital investments (−2 to +2%).* In evaluating investments, consideration shall include an analysis of the cost impact the facilities to be provided by the prospective contractor will have on total contract costs. If the prospective contractor furnishes its own facilities which significantly lowers the contract cost, a positive profit weighting is justified. Government financing or furnishing of required facilities, however, shall result in a negative weighting. Consideration shall also include the frequency of payment by the Government and the impact the contract is anticipated to have on the prospective contractor's cash flow. Generally, a negative weighting shall be given for payments more frequent than monthly. For payments less frequent than monthly, a positive weighting is justified.

(e) *Cost control and other past accomplishments (−1 to +1%).* This factor measures present and previous demonstration of efficient and economic contract performance for related work by the prospective contractor. Consideration shall include quality of work, ability to meet performance and delivery schedules, productivity improvements, efficiency in cost control and reduction, accuracy and reliability of cost estimates, and compliance with contract terms and conditions. Consistent excellent performance by the prospective contractor in the areas above, in comparison with other contractors in similar circumstances, shall justify a positive weighting. Unsuccessful or poor performance shall result in a corresponding rating.

(f) *Independent development.* No weight ranges are set forth for this factor since its significance in contributing to contract performance depends on the degree the development efforts, if any, are relevant to the contract end items. Other considerations include initiative of the prospective contractor in determining the need and application of the development, the extent of the prospective contractor's cost risks in the development, and the extent of direct or indirect development cost recovery from Government sources.

1415.905–70 Calculation of profit objective.

(a) Development of a profit or fee objective shall not begin until the contracting officer has—

(1) Made a thorough review of the work to be performed under the acquisition action;

(2) Collected and analyzed all available information on the prospective contractor; and

(3) Analyzed the prospective contractor's cost proposal and compared the cost elements of the proposal with the elements of the Government's cost estimate for the contract work (see FAR 15.803(b)).

(b) The contracting officer shall calculate a dollar profit amount for each of the factors and subfactors in FAR 15.905–1 and 1415.905–1 by using a percentage within the designated weight range for each factor as prescribed in 1415.905–1. Form DI–1920, Structured Approach for Profit/Fee Objective—Department of the Interior (see 1453.215–71), shall be used to facilititate calculation of the objective in accordance with the following steps—

(1) Using the prenegotiative objective established as required in FAR 15.807, determine the Government's cost objective for each of the subfactors listed in FAR 15.905–1(a) and 1415.905–1(a). An additional subfactor, "other costs", shall be used to consider all other direct costs (see 1415.905–1(a)(5)). Subtract from the "other cost" objective any amount proposed for the cost of money for facilities capital and allowable under FAR 31.205–10, as this amount is not to be included in the cost base for calculation of the profit objective.

(2) Using the weight ranges in 1415.905–1(a), determine a specific percentage for each subfactor and multiply this percentage by the cost objective determined for the subfactor under (b)(1) above to calculate a

weighted profit amount for each subfactor.

(3) Total the individual cost objectives for each of the subfactors in (b)(1) above to calculate the Government's total prenegotiation objective.

(4) Using the weight ranges in 1415.905-1 (b)-(f), determine a specific percentage for each of the factors in FAR 15.905-1 (b)-(f).

(5) Multiply the percentages determined for each of the factors in (b)(4) above by the Government's total prenegotiation objective calculated in (b)(3) above to obtain a weighted profit amount for each factor.

(6) Total the individual weighted profit amounts calculated in (b) (2) and (5) above to obtain the total profit or fee prenegotiation objective amount.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1419.2—Policies

Sec.
1419.201 General policy.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.
1419.503-70 Class set-aside for construction acquisitions.
1419.505 Rejection of set-aside recommendations.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1419.705-70 Requesting a subcontracting plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.
1419.810-70 Evaluation of 8(a) contractor performance.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1419.2—Policies

1419.201 General policy.

(a) In accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8), the Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for performing all functions and duties prescribed in FAR 19.201(c) and for—

(1) Developing and maintaining policies, procedures, regulations, and guidelines for the effective administration of the Department's small business and small disadvantaged business programs; and

(2) Providing functional direction and policy guidance to personnel in the implementation of the programs under (1) above.

(b) In addition to the requirements of FAR 19.201(b), heads of contracting activities or their designees shall be responsible for:

(1) Establishment of annual goals in accordance with Subpart 1419.70; and

(2) Appointment of a full-time Business Utilization and Development Specialist (BUDS), as prescribed in FAR 19.201(d), for each contracting office where—

(i) Annual contract obligations regularly exceed $20 million or represent a substantial part of the Bureau's total contracting program; and

(ii) The number, type, and size of contract transactions provide sufficient opportunities for small business and small disadvantaged business participation.

(3) Appointment of a part-time BUDS for each contracting office where the nature of the contracting program requires such action to ensure accomplishment of annual program goals.

(c) Business Utilization and Development Specialists appointed as prescribed in (b) above shall be responsible for:

(1) Assisting contracting officers in carrying out the policies as set forth in FAR Part 19 and Part 1419.

(2) Establishing an effective outreach program, which shall include but not be limited to:

(i) Locating new and emerging small business and small disadvantaged business concerns which have actual or potential capabilities to fulfill Interior's acquisition requirements, assuring that such firms are included on bidders mailing lists or source lists;

(ii) Advising and counseling small business and small disadvantaged business concerns on ways to increase their participation in contract and subcontract opportunities by: explaining bid and proposal submission requirements; serving as the focal point to ensure that small business and small disadvantaged business concerns have access to appropriate acquisition, management, technical and other program and project personnel; and directing small business and small disadvantaged business concerns to the Small Business Administration or the Minority Business Development Agency (Department of Commerce) for assistance when appropriate;

(iii) Participating in the activities of local small business and disadvantaged business associations, Minority Business Opportunity Committees, and Indian tribal councils to apprise them of the contracting activity's needs and to increase small business and disadvantaged business contracting opportunities; and

(iv) Performing outreach efforts through interaction with Federal, state and local entities and other pertinent associations and groups; participating in business and economic development conferences, and providing training opportunities in support of business and economic development programs.

(3) Assisting in the acquisition process by:

(i) Assuring that the contracting office(s) or activity is kept abreast of new or revised small business and small disadvantaged business concern regulations, policies, procedures and other related information;

(ii) Assisting in the advance acquisition planning process (see Subpart 1407.1);

(iii) Reviewing each acquisition requirement over $25,000 as well as a reasonable sample of small purchases;

(iv) Participating in proposal evaluation activities (when appropriate or when requested by the contracting officer);

(v) When appropriate, attending debriefings to unsuccessful small business and small disadvantaged business concerns; and

(vi) Assuring that a fair proportion of eligible small business and small disadvantaged business concerns are included on solicitation mailing lists and source lists.

(4) Maintaining all records and files necessary to demonstrate maximum support for the program; assuring compilation of current, accurate, and complete data, preparing all reports pertaining to small business and small disadvantaged business activities.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503-70 Class set-aside for construction acquisitions.

(a) To assure that a fair portion of the Department's contracts are placed with small business concerns, all acquisitions

for construction (as defined in FAR 36.102) estimated to cost $1 million or less shall be set aside on a class basis for exclusive participation by small business concerns except where small purchase procedures are used to accomplish the acquisition or when the acquisition involves emergency repair work. If the construction site is located in a labor surplus area, the acquisition shall be set aside for the exclusive participation of small businesses located in labor surplus areas (see FAR 19.504(a)). Any modification of this policy by the contracting officer shall be conducted in accordance with FAR 19.506.

(b) All acquisitions for construction estimated to cost in excess of $1 million shall be set aside on a case-by-case basis for exclusive participation of small business concerns or small business concerns located in labor surplus areas under the conditions in FAR 19.502-2 and 20.201-1.

419.505 Rejections of set-aside recommendations.

(a) As prescribed in FAR 19.505, the Assistant Secretary—Policy, Budget and Administration is authorized to reply to the Administrator of SBA on any SBS appeal of a contracting officer's set-aside recommendation.

(b) A written justification in support of the contracting officer's decision to reject the set-aside recommendation shall be approved by the head of the contracting activity (or designee). It shall then be forwarded for sequential review through the Director, Office of Small and Disadvantaged Business Utilization and the Director, Office of Acquisition and Property Management, for action by the Assistant Secretary—Policy, Budget and Administration.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1419.705-70 Requesting a subcontracting plan.

When a subcontracting plan is requested, the contracting officer shall—

(a) Send the offeror or bidder a request for the plan and include a copy of a sample subcontracting plan outline (see 1453.219-71).

(b) Specify a time limit for submission of the plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.

1419.810-70 Evaluation of 8(a) contractor performance.

(a) It is the policy of the Department to require evaluation of SBA 8(a) contractor performance by the contracting activity using form DI-1919, Performance Evaluation 8(a)]. (See 1453.219-72.)

(b) The report shall be prepared at the time of final acceptance of the work or after contract termination. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance. The authorized representative of the contracting officer shall provide timely evaluation of the SBA 8(a) contractor's performance.

(c) If the evaulation official concludes that the contractor's overall performance was poor or unsatisfactory, the contractor shall be advised in writing that a report of this performance is being proposed and the basis for the evaluation. If the contractor submits any comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(d) Each performance report shall be filed in accordance with bureau procedures and a copy of the report shall be promptly forwarded to the Office of Small and Disadvantaged Business Utilization.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

(a) The Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's women-owned business enterprise program in accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8).

(b) Annual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.202-70.

(c) Small women-owned businesses shall be considered for subcontracting opportunities under FAR 19.702 and subcontract awards shall be reported as prescribed in FAR 19.704.

PART 1420—LABOR SURPLUS AREA CONCERNS

Subpart 1420.1—General

Sec.
1420.102 General policy.

Subpart 1420.2—Set-asides

Sec.
1420.201 Set-asides for labor surplus area concerns.
1420.201-70 Set-asides for construction acquisitions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1420.1—General

1420.102 General policy.

As prescribed under Part III, Chapter 8 of the Departmental Manual (III DM 8), the Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's labor surplus area program in accordance with the policies in FAR Part 20.

Subpart 1420.2—Set-asides

1420.201 Set-asides for labor surplus area concerns.

1420.201-70 Set-asides for construction acquisitions.

(a) As prescribed in 1419.503-70, all acquisitions for construction, alteration, or repair of buildings, structures, or other real property which are estimated to cost $1 million or less shall be set aside on a class basis for combined small business, labor surplus area concerns when the construction site is located in a labor surplus area.

(b) Construction acquisitions estimated to exceed $1 million in cost may be set aside for labor surplus area concerns by the contracting officer under the conditions prescribed in FAR 20.201-1.

PART 1424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1424.1—Protection of Individual Privacy

Sec.
1424.102 General.
1424.103 Procedures.
1424.104 Contract clauses.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1424.1—Protection of Individual Privacy

1424.102 General.

Procedures for implementing the Privacy Act of 1974 and Departmental regulations under 43 CFR 2, Subpart D, are contained in Part 317 of the Departmental Manual (317 DM).

1424.103 Procedures.

When required by FAR 24.103(b)(2), the contracting officer shall provide the contractor with a copy of the Department's Privacy Act regulations codified in 43 CFR 2, Subpart D.

1424.104 Contract clauses.

The clause at FAR 52.224-1, Privacy Act Notification, as prescribed in FAR 24.104(a), shall be supplemented in accordance with 1452.224-1.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations under 43 CFR 2.11-2.20.

(b) It is the policy of the Department to alert prospective contractors which place restrictions on the disclosure and use of proposal data that certain data may be subject to disclosure under a Freedom of Information Act request. (See 1415.413 and 1452.215-71.)

Part 1425—FOREIGN ACQUISITION

Subpart 1425.2—Buy American Act—Construction Materials

Sec.
1425.202 Policy.
1425.203 Evaluating offers.
1425.204 Violations.
1425.205 Solicitation provision.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1425.2—Buy American Act—Construction Materials

1425.202 Policy.

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determinations prescribed in FAR 25.202(a)(2) and FAR 25.203(a).

(b) The Director, Office of Acquisition and Property Management shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 1425.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

(d) Determinations approved under FAR 25.202(a)(2) shall require listing of excepted material in the contract as prescribed in FAR 25.202(c).

1425.203 Evaluating offers.

(a) Unless the Assistant Secretary—Policy, Budget and Administration determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(b) The provision at 1452.225-70, Buy American Act Notice—Department of the Interior, requires offerors proposing to use foreign construction materials to provide adequate information for Government evaluation under (a) above, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) above, evaluation of the offer shall be made on the basis of the stated price for comparable domestic construction material. If the offer does not state a price for comparable domestic construction material, and use of the foreign construction material is not authorized under (a) above, the offer shall be rejected.

(c) The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent of the cost of all foreign construction materials authorized for use under (a) above shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225-5, Buy American Act—Construction Materials.

(d) Determinations for authorization to use evaluation methods other than those prescribed in this section shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action. The determination shall specify particular domestic construction materials which are expected to unreasonably increase the cost or are impracticable, and the percentage differential to be used in evaluating such materials. If the determination is approved, the Director, Office of Acquisition and Property Management shall authorize appropriate revisions to the provision at 1452.225-70.

4125.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the head of the contracting activity for initiation of debarment action in accordance with Subpart 1409.4.

1425.205 Solicitation provision.

In addition to the requirements of FAR 25.205, the contracting officer shall insert the provision at 1452.225-70, Buy American Act Notice—Department of the Interior, in solicitations for construction inside the United States. For determinations made under FAR 25.202(a)(2) that use of a domestic construction material would be impracticable (see 1425.202), the material shall be listed under paragraph (a) of the provision at 1452.225-70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1428—BONDS AND INSURANCE

Subpart 1428.1—Bonds

Sec.
1428.101 Bid guarantees.
1428.101-70 Annual bid bonds.
1428.104 Annual performance bonds.

Subpart 1428.3—Insurance

1428.301 Policy.
1428.306 Insurance under fixed-price contracts.
1428.306-70 Insurance for aircraft services contracts.
1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1428.311-2 Contract clause.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1428.1—Bonds

1428.101 Bid guarantees.

1428.101-70 Annual bid bonds.

(a) Bidders shall submit annual bid bonds to the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

(b) The Office of Acquisition and Property Management will maintain and disseminate all information regarding annual bid bonds.

1428.104 Annual performance bonds.

Annual performance bonds shall be submitted to the location prescribed in 1428.101-70.

Subpart 1428.3—Insurance

1428.301 Policy.

It is the policy of the Department of the Interior to insure its own risks only when such action is in the best interest of the Government. Circumstances where contractors are required to carry insurance are listed under FAR 28.301 and 28.306. In these circumstances, the clause at 1452.228-70, Indemnification—Department of the Interior, shall be inserted in the contract.

1428.306 Insurance under fixed-price contracts.

1428.306-70 Insurance for aircraft services contracts.

(a) *Policy.* In accordance with FAR 28.306(a), it is the policy of the Department of the Interior to establish minimum insurance requirements for certain types of aircraft services contracts in order to protect the Government and its contractors.

(b) *Applicability.* The clauses prescribed by paragraph (c) of this section are applicable to all fixed-price contracts involving use of aircraft with either contractor-furnished or Government-furnished pilot except for one-time charters when Government exposure is minimal and time limitations are present.

(c) *Clauses.* The following clauses shall be used as prescribed:

(1) The contracting officer shall insert the clause at 1452.228-71, Risk and Indemnities—Department of the Interior, in all fixed price contracts for operation of aircraft with contractor-furnished pilot.

(2) The contracting officer shall insert the clause at 1452.228-72, Liability for Loss or Damage—Department of the Interior, in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft.

(3) The contracting officer shall insert the clause at 1452.228-73, Liability for Loss or Damage—Department of the Interior, (Property Interest), in all fixed-price controls involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option).

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311-2 Contract clause.

The clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-2, shall be modified for use in accordance with the instructions in 1452.228-7.

PART 1432—CONTRACT FINANCING

Subpart 1432.3—Loan Guarantees for Defense Production

Sec.
1432.304 Procedures.
1432.304-2 Certificate of eligibility.

Subpart 1432.4—Advance Payments

1432.402 General.
1432.404 Exclusions.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1432-3—Loan Guarantees for Defense Production

1432.304 Procedures.

1432.304-2 Certificate of eligibility.

(a) The Assistant Secretary—Policy, Budget and Administration shall authorize guaranteed loan applications and transmit them to the Federal Reserve Bank as prescribed in FAR 32.304-2(b).

(b) Applications for loan guarantees (see FAR 32.304-1) and the contracting officer's certificate of eligibility (see FAR 32.304-2) shall be submitted by the head of the contracting activity to the Director, Office of Acquisition of Property Management for further action under (a) above.

Subpart 1432.4—Advance Payments

1432.402 General.

(a) Except for contracts excluded under (b) below and under 1432. 404, the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The Assistant Secretary for Indian Affairs is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4 for—

(1) Contracts with States or similar public bodies for foster home care of Indian children for periods not in excess of 90 days;

(2) Contracts with state universities or similar public bodies for surveys of physical resources and the development of studies of social and economic factors affecting Indian tribes without specific security for periods not in excess of 90 days; or

(3) Contracts with Indian tribal contractors which are totally Indian-owned and controlled nonprofit businesses and which qualify for contracts with the Bureau of Indian Affairs. The amount of the advance payments authorized shall not exceed $250,000.

(c) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until it is obtained from the contractor.

(d) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the head of the bureau finance office (see FAR 32.402(e)(2)) to the head of the contracting activity for transmittal to the Chief, Division of Acquisition and Grants under (a) above. Recommendations which do not contain the information required by FAR 32.409-1 or FAR 32.409-2 will not be processed by the Division of Acquisition and Grants.

(e) The Assistant Secretary for Indian Affairs is required to make a detailed report to the Assistant Secretary—Policy, Budget and Administration on all advance payments authorized under (b)(1) and (b)(2) above at the close of each fiscal year.

1432.404 Exclusions.

Advance payments may be used under Bureau of Indian Affairs service contracts (including services which may extend beyond the current fiscal year) made pursuant to the Act of June 4, 1936 (25 U.S.C. 452), the Act of August 3, 1956 (25 U.S.C. 309), and statutes terminating Government supervision over certain Indian tribes, without regard to FAR 32.402(e), when the current Department Appropriations Act authorizes and requires advance payments in these circumstances.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

Department of the Interior form DI-83, Notice of Assignment, and form DI-84, Instrument of Assignment, shall be used by an assignee when complying with the requirements in FAR 32.803(e). (See 1453. 232-70).

PART 1433—DISPUTES AND APPEALS

Sec.
1433.003 Applicability.
1433.003-70 Interior Board of Contract Appeals.
1433.011 Contracting officer's decision.
1433.012 Contracting officer's duties upon appeal.

Sec.
1433.014 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1433.003 Applicability

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determination prescribed under FAR 33.003(b).

(b) Determinations under (a) above shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

1433.003-70 Interior Board of Contract Appeals.

(a) The Interior Board of Contract Appeals, IBCA, is authorized by the Secretary to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has duly designated the IBCA to decide the appeal.

(b) The address of the IBCA is 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) The IBCA rules of procedures are in 43 CFR Part 4, Subpart C.

1433.011 Contracting officer's decision.

The written decision required by FAR 33.011(a)(4) shall include, in the paragraph listed under FAR 33.011(a)(4)(v), specific reference to the Interior Board of Contract Appeals (IBCA), 4015 Wilson Boulevard, Arlington, Virginia, 22203 and its procedures under 43 CFR Part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by FAR.

1433.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the IBCA by certified mail within 5 days of receipt. The Office of the Solicitor shall also be notified of the appeal by the contracting officer. (See 43 CFR 4.103).

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 43 CFR 4.104 in the form of an appeal file to the IBCA, appropriate office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the IBCA.

1433.014 Contract clause

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all solicitations and contracts of the Department.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1436—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

Subpart 1436.2—Special Aspects of Contracting for Construction

Sec.
1436.209 Construction contracts with architect-engineer firms.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead based paint.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.
1436.602-1 Selection criteria.
1436.602-4 Selection authority.
1436.602-5 Short selection processes for contracts not to exceed $10,000.
1436.603 Collecting data on and appraising firms' qualifications.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1436.2—Special Aspects of Contracting for Construction

1436.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Office of Acquisition and Property Management.

(b) Requests for approval under (a) above shall be made by the head of the contracting activity, through the appropriate Office of the Solicitor, to the Director, Office of Acquisition and Property Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead-based paint.

(a) *Policy.* The Lead-Based Paint Poisoning Prevention Act, (42 U.S.C. 4831), as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Sec. 204, Pub. L. 94-317 (42 U.S.C. 4831)), prohibits the use of lead-based paint in Federal or federally assisted construction or rehabilitation of residential structures. Implementing regulations of the Secretary of Housing and Urban Development under 24 CFR Part 35 requires agencies to include appropriate provision in contracts or subcontracts for construction or rehabilitation of residential structures.

(b) *Definitions.* As used in this section, "residential structure" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

(c) *Procedures.* The contracting officer shall insert the clause at 1452.236-70, Prohibition Against Use of Lead-Based Paint, in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.

1436.602-1 Selection criteria.

(a) In addition to the selection criteria under FAR 36.602-1(a), the following additional criteria shall be used in the evaluation of each potential contractor when applicable to a particular acquisition:

(1) Computer assisted design capability and capacity (where such design is required.)

(2) Adequacy of facilities for performance of the work including those necessary to provide specialized services that may be required.

(3) Volume and nature of present workload as it relates to the ability to perform the work required.

(4) Experience and qualifications of proposed key personnel including specialized technical skills, project coordination and management skills, and experience in working together as a team.

(5) Availability of additional contractor personnel or consultants to support expansion or acceleration of the project.

(6) Other specific criterion as may be required.

(b) Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

1436.602-4 Selection authority.

The head of the contracting activity or designee is authorized to serve as the designated selection authority in accordance with FAR 36.602-4.

1436.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602-5(a) shall be used for architect-engineer contracts not expected to exceed $10,000.

1436.603 Collecting data on and appraising firms' qualifications.

(a) Heads of contracting activities which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Office of Acquisition and Property Management for review and approval. The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Office of Acquisition and Property Management no later than 30 days after the beginning of each fiscal year.

PART 1437—SERVICE CONTRACTING

Subpart 1437.70—Appraisal Services (Real Property)

Sec.
1437.7000 Scope of subpart.
1437.7001 Policy.
1437.7002 Contractor qualification requirements.
1437.7003 Appraisal standards.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.
1437.7103 Clause.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1437.70—Appraisal Services (Real Property)

1437.7000 Scope of subpart.

This subpart prescribes policies and procedures for acquiring real property appraisal services by contract.

1437.7001 Policy.

Real property appraisal services shall be acquired by negotiation under the authority in FAR 15.204. The procedures for acquiring architect—engineer services, as prescribed in FAR Subpart 36.6, shall not be used to acquire real property appraisal services.

1437.7002 Contractor qualification requirements.

(a) If it is anticipated that a real property appraisal to be acquired by contract may be subject to future court action, the contractor shall be a qualified appraiser as listed in the file maintained by the Land and Natural Resources Division, U.S. Department of Justice. This requirement shall be treated as a special standard of responsibility (see FAR 9.104-2).

(b) The contracting officer shall include the requirements of (a) above in all solicitations for real property appraisal services which may be subject to future court action.

1437.7003 Appraisal standards.

(a) All real property appraisals made under a contract shall conform to the requirements of the Interagency Land Acquisition Conference publication "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Government Printing Office.

(b) The Standards in (a) above shall be made a part of all solicitations and resulting contracts for real property appraisal services.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.

This subpart prescribed policies and procedures for acquiring information collection services which are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

1437.7103 Clause.

The contracting officer shall insert the clause at 1452.237-70, Information Collection—Department of the Interior, in all solicitations and contracts which are subject to the Paperwork Reduction Act of 1980.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1442—CONTRACT ADMINISTRATION

Subpart 1442.12—Novation and Change of Name Agreements

1442.1204 Agreement to recognize a successor in interest (novation agreement).

For protection of Government rights in accrual of inventions, patents and data, the novation agreement format prescribed in FAR 42.1204(e) shall be supplemented by adding the following item (10) under Section (b) of the agreement—

(10) The transferor agrees that any rights in inventions, patents, and data which accrue to the Government or to third party beneficiaries under the contracts between the transferor and the Government shall not be diminished as a result of the transfer instruments or this agreement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301)

SUBCHAPTER H—CLAUSES AND FORMS

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1452.000 Scope of part.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.
1452.204-70 Release of claims.
1452.204-71 Indian preference.
1452.204-72 Indian preference program.
1452.210-70 Brand name or equal.
1452.215-70 Examination of records by the Department of the Interior.
1452.215-71 Use and disclosure of proposal information.
1452.224-1 Privacy Act notification.
1452.225-70 Buy American Act notice.
1452.228-7 Insurance—Liability to third persons.
1452.228-70 Indemnification.
1452.228-71 Risk and indemnities.
1452.228-72 Liability for loss or damage.
1452.228-73 Liability for loss or damage (property interest).
1452.236-70 Prohibition against use of lead-based paint.
1452.237-70 Information collection.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1452.000 Scope of part.

This part prescribes Department of the Interior provisions and clauses for use in acquisition.

Subpart 1452.2—Texts of Provisions and clauses

1452.200 Scope of subpart.

This subpart sets forth the texts of all DIAR provisions and clauses. Consistent with the numbering scheme prescribed in FAR 52.101 and the approach used in Far Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which provisions and clause requirements are addressed.

1452.204-70 Release of Claims.

As prescribed in 1404.804-70, insert the following clause in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000.

Release of Claims—Department of the Interior (Apr. 1984)

After completion of work and prior to final payment, the contractor shall furnish to the contracting officer a release of claims (DI-

137) against the United States relating to this contract, other than claims excepted from the operation of the release.

[End of Clause]

1452.204-71 Indian Preference.

As prescribed in 1404.7003(a), insert the following clause in solicitations issued and contracts awarded (a) by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 et seq. and 25 U.S.C. 455 et seq., respectively); (b) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and (c) a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

Indian Preference—Department of the Interior (Apr. 1984)

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity".

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus are concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

1452.204-72 Indian Preference Program.

As prescribed in 1404.7003(b), insert the following clause in all solicitations and contracts, awarded by the contacting activity which may exceed $50,000, and which contain the clause at 1452.204-71, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000 but which contain the clause at 1452.204-71 and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training, and subcontracting.

Indian Preference Program—Department of the Interior (Apr. 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference—Department of the Interior", the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will: (i) Maintain liaison with the Government and Tribe(s) on Indian preference matters; (ii) supervise compliance with the provisions of this clause; and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunties. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contract in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: (i) A clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) a statement indicating the perference will be given to Indian organizations and Indian-owned economic

enterprises in accordance with section 7(b) of Pub. L. 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) definitions for the tems "Indian organization" and "Inidan-owned economic enterprise" as prescribed under the "Indian Preference—Department of the Interior" clause of this contract; (iv) a represenatation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian owned economic enterprises, no responsive bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior"clause of this contract. If one or more responsive bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate: (i) The names and addresses of all Indians seeking employment for each employment position available under this contract; (ii) the number of types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; (iii) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

1452.210-70 Brand Name or Equal.

As prescribed in 1410.004-70(b)(3), insert the following provision in solicitations which contain a "brand name or equal" purchase decription:

Brand Name or Equal—Department of the Interior (Apr. 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids or proposals offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder/offeror clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder/offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid or proposal. The evaluation of bids or proposals and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder/offeror or identified in its bid or proposal as well as other information reasonably available to the contracting activity. Caution to Bidders/Offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the bid or proposal and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder/offeror must furnish as a part of its bid or proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation; and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder/offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its bid or proposal a clear description of such proposed modifications; and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

1452.215-70 Examination of Records by the Department of the Interior.

As prescribed in 1415.106-1, insert the following clause in all contracts containing the clause at FAR 52.215-1, Examination of Records by the Comptroller General (see FAR 15.106-1(b)):

Examination of Records by the Department of the Interior (Apr. 1984)

For purposes of the Examination of Records by the Comptroller General (APR 1984) clause of this contract (FAR 52.214-1), the Secretary of the Interior, the Inspector General, and their duty authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

1452.215-71 Use and Disclosure of Proposal Information.

As prescribed in 1415.413-70, insert the following provision in requests for proposals and requests for quotations instead of the provision at FAR 52.215-12:

Use and Disclosure of Proposal Information—Department of the Interior (Apr. 1984)

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials, which are trade commodities.

(2) "Confidential commerical or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(b) If the offeror, or its subcontactor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages —— of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

(c) The offeror shall also specifically identify trade secret information and confidential commerical and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal."

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that: (i) If a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(End of provision)

1452.224-1 Privacy Act Notification.

(a) As prescribed in 1424.104, the clause at FAR 52.224-1, Privacy Act Notification, shall be modified before insertion into solicitations and contract by—

(1) Changing the title of the clause to read "Privacy Act Notification (Apr. 1984) (Deviation)"; and

(2) Adding the following sentence to the end of the clause:

Applicable Department of the Interior regulations are set forth in 43 CFR 2, Subpart D, and may be obtained by submitting a written request to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, D.C. 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviation in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

1452.225-70 Buy American Act Notice.

As prescribed in 1425.205, insert the following provision in solicitations for construction inside the United States:

Buy American Act Notice—Department of the Interior (Apr. 1984)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (see the clause titled "Buy American Act—Construction Materials"). This requirement does not apply to the following construction materials:

(List excepted material or indicate "none")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) use of comparable domestic construction material is impracticable or would unreasonably increase the cost.

(c) Any offer based on the use of one or more other foreign construction materials shall include data, in the format listed in paragraph (e) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall be computed to include all delivery costs to the construction material and shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government shall add to the offer 6 percent of the cost of foreign material which qualifies for acceptance under paragraph (c) above.

(e) For foreign construction material which does not qualify for acceptance under paragraph (c) above, the Government shall evaluate the offer on the basis of the stated price for comparable domestic construction material, and the offeror shall be required to furnish such domestic construction material at that price. *Therefore, if the offer does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) above, the offer shall be rejected as nonresponsive.*

(f) For evaluation purposes under paragraph (c) above, the following information shall be included in the offer for the use of one or more foreign construction materials:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit	Quantity	Cost including all delivery costs to construction site[1] (dollars)
Item 1:			
Foreign construction material.	.....	.....	$
Comparable domestic construction material.	.....	.....	$
Item 2:			
Foreign construction material.	.....	.....	$

Construction material description	Unit	Quantity	Cost including all delivery costs to construction site[1] (dollars)
Comparable domestic construction material.	.....	.....	$

[1] Also include applicable duty for foreign material.

[End of provision]

1452.228-7 Insurance—Liability to Third Persons.

(a) As prescribed in 1428.311-2, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, shall be modified before insertion into solicitations and contracts by—

(1) Changing the title of the clause to read "Insurance—Liability to Third Persons (Apr. 1984) (Deviations)"; and

(2) Changing the first sentence in subparagraph (c)(2) of the clause to read "For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

1452.228-70 Indemnification.

As prescribed in 1428.301, insert the following clause in all contracts where circumstances warrant the carrying of insurance by the contractor (see FAR 28.301 and 28.306):

Indemnification—Department of the Interior (Apr. 1984)

(a) The Contractor shall indemnify and hold the Government harmless for any and all losses, damages, or liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made, arising out of the activities of the Contractor, its employees, subcontractors, or agents under the contract. For the purpose of fulfilling its obligations under this paragraph, the Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The name insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

$——— each person.*

$——— each occurrence.*

$——— property damage.*

(b) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of the policy or certificate or any modification of the policy or certificate which adversely affects the interest of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy and the insured.

(c) Prior to the commencement of work hereunder the Contractor shall furnish the Contracting Officer with acceptable evidence showing that the insurance coverage described in this clause has been obtained.

*These amounts to be set by the Contracting Officer.

(End of clause)

1452.228-71 Risk and Indemnities.

As prescribed in 1428.306-70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

Risk and Indemnities—Department of the Interior (Apr. 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1452.228-72 Liability for loss or damage.

As prescribed in 1428.306-70(c)(2), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft:

Liability for Loss or Damage—Department of the Interior (Apr. 1984)

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) below. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extension thereof, hull insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents—Up to 5% of the current insured value of the aircraft stated in the policy, or $10,000.00, whichever is less.

(2) Not In-Motion Accidents—Up to $250.00 per accident. Such reimbursement shall not be made, however, for loss or damage to the aircraft resulting from: (1) Normal wear and tear, (2) negligence or fault in maintenance of the aircraft by the Contractor, or (3) a defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.228-73 Liability for Loss or Damage (Property Interest).

As prescribed in 1428.306-70(c)(3), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option):

Liability for Loss or Damage—Department of the Interior (Apr. 1984)

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for: (1) Normal wear and tear to the aircraft, or (2) loss which occurs as a result of negligence or fault in maintenance of the aircraft by the contractor, or (3) loss resulting from a latent

defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.236-70 Prohibition Against Use of Lead-based Paint.

As prescribed in 1436.570, insert the following clause in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated:

Prohibition Against Use of Lead-based Paint—Department of the Interior (Apr. 1984)

No lead-based paint containing more than .5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 23, 1977, no lead-based paint containing more than .06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

1452.237-70 Information Collection.

As prescribed in 1437.7103, insert the following clause in solicitations and contracts where collection of information upon identical items from ten or more public respondents is required or may be required:

Information Collection—Department of the Interior (Apr. 1984)

If performance of this contract requires the contractor to collect information upon identical items from ten or more public respondents, no action shall be taken or funds expended in the solicitation or collection of such information until the contractor has received from the Contracting Officer written notification that approval has been obtained from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. The Contractor agrees to provide all information requested by the Contracting Officer which is necessary to obtain approval from OMB.

(End of clause)

PART 1453—FORMS

Sec.
1453.000 Scope of part.

Subpart 1453.2—Prescription of Forms

1453.200 Department of the Interior forms.
1453.204 Administrative matters.
1453.204-70 Release of Claims (DI-137).
1453.215 Contracting by negotiation.
1453.215-71 Structured approach for profit/fee objective (DI-1920).
1453.219 Small business and small disadvantaged business concerns.
1453.219-71 Sample subcontracting plan outline.
1453.219-72 Performance evaluation (8(a)) (DI-1919).
1453.232 Contract financing.
1453.232-70 Assignment of claims (DI's 83, 84).

Subpart 1453.3—Illustrations of Forms

1453.300 Scope of subpart.
1453.303 Agency forms.
1453.303-DI-83 Department of the Interior, Form DI-83, Notice of Assignment.
1453.303-DI-84 Department of the Interior, Form DI-84, Instrument of Assignment.
1453.303-DI-137 Department of the Interior, Form DI-137, Release of Claims.
1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance. Evaluation 8(a)).
1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/fee Objective.
1453.303-70 Sample subcontracting plan outline format.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1453.000 Scope of part.

This part (a) prescribes Department of the Interior (DI) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1453.

Subpart 1453.2—Prescription of forms.

1453.200 Department of the Interior forms.

This subpart prescribes Department of the Interior (DI) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which the form usage requirements are addressed.

1453.204 Administration matters.

1453.204-70 Release of claims (DI-137).

DI-137, Release of claims, is precribed for use in obtaining a contractor release of claims as specified in 1404.804-70.

1453.215 Contracting by negotiation.

1453.215-71 Structured approach for profit/fee objective (DI-1920).

Form DI-1920, Structured Approach for Profit/Fee Objective—Department of the Interior is prescribed for use in calculating the profit or fee prenegotiation objective as required in 1415.905.

1453.219 Small business and small disadvantaged business concerns.

1453.219-71 Sample subcontracting plan outline.

The Sample Subcontracting plan Outline format is prescribed for use in requesting subcontracting plans as specified in 1419.705-70.

1453.219-72 Performance Evaluation (8(a)) (DI-1919).

DI-1919, Performance Evaluation (8(a)), is prescribed for use in evaluating the performance of SBA 8(a) contractors as specified in 1419.810-70.

1453.232 Contract financing.

1453.232-70 Assignment of claims (DI's 83, 84).

The following forms are prescribed for use in connection with making a written notice of assignment as specified in FAR Subpart 32.8 and Subpart 1432.8:

(a) DI-83 (1/72), Notice of Assignment. (See 1432.805.)

(b) DI-84 (1/72), Instrument of Assignment. (See 1432.805.)

Subpart 1453.3—Illustrations of Forms

1453.300 Scope of subpart.

This subpart contains illustrations of Department of the Interior (DI) forms used in acquisition as prescribed by the DIAR.

1453.303 Agency forms.

This section illustrates Department of the Interior (DI) forms specified by the DIAR for use in acquisition. The forms are illustrated in numerical order. The subsection numbers correspond with the DI numbers.

BILLING CODE 4310-10-M

1453.303-DI-83 Department of the Interior, Form DI-83, Notice of Assignment.

Form DI-83
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

NOTICE OF ASSIGNMENT

SEE INSTRUCTIONS ON REVERSE BEFORE COMPLETING FORM

TO: *(check one)*

☐ Contracting Officer, or

☐ Surety_____
(Name)

Re Contract Number_____ Dated_____

With_____ of_____
(Contractor) (City) (State) (Zip Code)

For_____
(Project Identification)

PLEASE TAKE NOTICE that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 54 Stat. 1029; 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15). A true copy of the instrument of assignment executed by the contractor on *(date)* , is attached to the original hereof.

Payments due or to become due under such contract shall be made to the undersigned assignee.

Please complete and return all copies of this Notice as indicated on the reverse hereof.

_____ By_____
(Name of Assignee) (Name and Title of Officer of Assignee)

_____ _____
(Street Address) (Signature)

_____ _____
(City) (State) (Zip Code) (Date)

Receipt is hereby acknowledged of the above Notice and a copy of the instrument of assignment. These were received at ☐ a.m. ☐ p.m., on *(date)*

FOR USE OF CONTRACTING OFFICER	*FOR USE OF SURETY*
	(Surety Name)
(Name of Contracting Officer)	By_____ (Name and Title of Signing Officer)
(Signature)	(Signature of Surety Officer)

INSTRUCTIONS

Under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), moneys due or to become due from the United States under a contract providing for payments aggregating $1,000 or more may be assigned to a bank, trust company, Federal lending agency, or other recognized financing institution in the absence of a contract provision forbidding assignment. Unless otherwise permitted by the contract: (1) an assignment must cover all further amounts payable under the contract; (2) shall not be subject to further assignment; and (3) shall not be made to more than one party, except that assignment may be made to one party acting as agent or trustee for two or more parties participating in the financing. The assignee is required to provide a notice of assignment to the Contracting Officer; to the surety, if there is one; and to the disbursing officer, if any, designated in the contract to make payments.

In order to avoid possible invalidity of an assignment, and to provide a notice of assignment to all parties concerned, the following instructions should be followed carefully:

1. *Assignee:*

(a) Send an original and two copies of this *Notice of Assignment* (DI–83), together with one true copy* of an instrument of assignment**, *to the Contracting Officer.*

(b) Send by certified mail, return receipt requested, another original and three copies of this Notice of Assignment, together with one true copy* of the instrument of assignment, *to the surety*—if bond(s) were provided by a surety under the contract. *(See Instruction 4 below for additional required action by assignee.)*

2. *Contracting Officer:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Forward one acknowledged copy of this Notice of Assignment plus the true copy of the instrument of assignment *to the appropriate finance officer.*

(c) Return one acknowledged copy of this Notice of Assignment *to the assignee.*

(d) Retain the original Notice of Assignment.

3. *Surety:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Return three acknowledged copies of this Notice of Assignment *to the assignee.*

(c) Retain the original Notice of Assignment and the true copy of the instrument of assignment.

4. *Assignee:*

(a) Retain one copy of this Notice of Assignment acknowledged by the surety.

(b) Forward two copies of this Notice of Assignment acknowledged by the surety, *to the Contracting Officer.* If the surety has refused to acknowledge receipt of this Notice of Assignment, the assignee *must* prepare an affidavit to that effect, attach the postal return receipt which covered the mailing of this Notice of Assignment to the surety, and forward them *to the Contracting Officer.*

5. *Contracting Officer:*

(a) Retain either the affidavit and postal receipt from the assignee or one of the copies of this Notice of Assignment acknowledged by the surety.

(b) Forward a copy of the affidavit, or the copy of this Notice of Assignment acknowledged by the surety *to the appropriate finance officer.*

** A true copy of an instrument of assignment may be a*

(a) complete machine copy of the original;

(b) complete duplicate copy of the original; or

(c) certified copy of the original, typewritten or otherwise, if it is accurate and complete in all respects and is accompanied by a certificate, executed by a Notary Public or other officer legally authorized to administer oaths. to the effect that it is a true copy.

*** DI–84 completed, may be used as the instrument of assignment.*

1453.303-DI-84 Department of the Interior, Form DI-84, Instrument of Assignment.

Form DI-84
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

INSTRUMENT OF ASSIGNMENT

KNOW ALL MEN THAT pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S.C. 203, 41 U.S.C. 15), for value received, the undersigned Assignor (Contractor) does hereby assign irrevocably unto

of

as Assignee, all right, title, and interest in all moneys now due or to become due from, and not already paid by the United States of America under Contract No. , dated , for , previously entered into by and between the United States of America and the Assignor. The Assignor states that no previous assignment has been made, and no additional assignment will be made under the said contract; and authorizes payment of moneys now due or to become due to be made by checks drawn to the order of the said Assignee.

IN WITNESS WHEREOF, The undersigned Assignor has caused this assignment to be executed this day of 19

By

(Assignor) (Signature)

(Street Number or R.F.D.) (Name)

(City) (State) (Zip Code) (Title)

ACKNOWLEDGMENT

(Complete only if Assignor is an individual or partnership)

State of)
ss:
County of)

I, , a Notary Public in and for the County of , State of , do hereby certify that on this day of , 19 , personally appeared before me the above signator , to me personally known, who, being by me duly sworn, duly acknowledged the execution of the above assignment to be his voluntary act and deed.

[NOTARIAL SEAL]

My commission expires

(Signature of Notary Public)

AUTHORITY TO MAKE ASSIGNMENT

(Complete only if Assignor is a corporation)

I, certify that I am of the corporation named as Assignor herein; that who executed this assignment on behalf of the said corporation was then of the said corporation, acting for and on its behalf by authority of its governing body.

[SEAL]

(Date) (Signature)

1453.303-DI-137 Department of the Interior, Form DI-137, Release of claims.

UNITED STATES
DEPARTMENT OF THE INTERIOR

(Bureau or Office)

RELEASE OF CLAIMS

Contract Number

Contract Date

WHEREAS, by the terms of the above-identified contract for

entered into by the United States of America, hereinafter also referred to as the United States, and the contractor whose name appears on the contract as

it is provided that after completion of all work, and prior to final payment, the contractor will furnish the United States with a release of all claims;

NOW, THEREFORE, in consideration of the above premises and the payment by the United States to the contractor of the amount now due under the contract, to wit, the sum of

dollars

($), the contractor hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of debts, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said contract except:

IN WITNESS WHEREOF, the contractor has executed this release this day of , 19

(Contractor)

(Street Number or R.F.D.)

(City) (State) (Zip Code)

By

(Signature)

(Name — Type or Print)

(Title)

COMPLETE ONLY IF CONTRACTOR IS A CORPORATION

I, , CERTIFY That I am the of the corporation named as contractor herein; that , who signed this release on behalf of the corporation, was then of said corporation; and that said release was duly signed for and on behalf of said corporation by authority of its governing body.

[SEAL]

(Signature)

U.S. GOVERNMENT PRINTING OFFICE : 1973—728-818/1364 3-1 DI—137 (Rev. August 1972)

1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance Evaluation (8(a)).

Department of the Interior

EVALUATION REPORT ON 8(a) CONTRACTOR PERFORMANCE

1. Purchasing Office and Address: _____

2. Name of Contractor and Address: _____

3. Contract Number: _____ 4. Date of Award: _____ 5. Cost: _____

6. Number of Modifications: ____
Reasons for Modifications (Explain) _____

7. Contractor's Overall Performance: Excellent ___ Good ___ Fair ___ Poor ___

8. Quality of Product Or Service Provided: Excellent ___ Good ___ Fair ___ Poor ___

9. Compliance With Essential Contract Terms And Specifications: Yes ___ No ___
If no, explain. _____

10. Was Required Delivery Schedule Met? Yes ___ No ___ If no, explain.
_____

11. Was Contract Performed Within Negotiated Price? Yes ___ No ___ (Explain)
_____

12. Lessons Learned/Additional Comments: _____

13. Signature/Date: _____ Contracting Officer _____ Contracting Officer's Technical Representative

DI-1919 (10/83)

1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/Fee Objective.

STRUCTURED APPROACH FOR PROFIT/FEE OBJECTIVE
DEPARTMENT OF THE INTERIOR

CONTRACTOR	RFP/CONTRACT NO.	MOD. NO.

FACTOR/SUBFACTOR	WEIGHT RANGE	Column A(%) WEIGHT ASSIGNED		Column B($) PRENEGOTIATION COST OBJECTIVE		Column C($) PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B
CONTRACTOR EFFORT						
Material Acquisition	1% to 4%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Conversion of Direct Labor	4% to 12%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Conversion-Related Indirect Costs	3% to 8%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
General Management	4% to 8%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Other Cost (Subtract Facilities Capital Cost of Money)			X		=	
			X		=	
			X		=	
			X		=	
			X		=	
1 Total Contractor Effort (Add Columns)				$		$
OTHER FACTORS	WEIGHT RANGE	WEIGHT ASSIGNED		TOTAL COST OBJECTIVE (FROM LINE 1, COLUMN B)		PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B)
2 Contract Cost Risk	0% to 7%		X		=	
3 Federal Socioeconomic Programs	+ - .5%		X		=	
4 Capital Investments	+ - 2%		X		=	
5 Cost Control and Other Past Accomplishments	+ - 1%		X		=	
6 Independent Development			X		=	
TOTAL PROFIT/FEE OBJECTIVE (ADD LINES 1-6, COLUMN C)						$

BILLING CODE 4310-10-C

1453.303-70 Sample subcontracting plan outline format.

Small Business and Small Disadvantaged Business Subcontracting Plan Outline Format

Date:

Contractor:
Address:
Solicitation or Contract Number:
Item/Service:

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507.

1. (a) The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) will be applicable to any contract awarded as a result of this solicitation.

(i) Small Business Concerns: —— % of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns.

(ii) Small Disadvantaged Business Concerns: —— % of total planned subcontracting dollars this contract will go to subcontractors who are small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The following dollar values correspond to the percentage goals shown in (a) above.

(i) Total dollars planned to be subcontracted to small business: $——.

(ii) Total dollars planned to be subcontracted to small disadvantaged business: $——.

(c) The total estimated dollar value of all planned subcontracting (to all types of business) under this contract is $——.

(d) The following principal products and/or services will be subcontracted under this contract, and the distribution among small and small disadvantaged business is as follows: (Products/services planned to be subcontracted to Small Business Concerns are identified by * and to Small Disadvantaged by **).

(e) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB and SDB sources).

Indirect and overhead costs (check one): have been —— have not been —— included in the goals specified in 1 (a) and (b).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be incurred with small business and small disadvantaged business subcontractors.

2. The following individual will administer the subcontracting program:

Name:
Address:
Telephone:
Title:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows: General overall responsibility for review, monitoring and execution of the plan including but not limited to:

(a) Obtaining small and small disadvantaged business sources from all applicable agencies such as SBA and MBDA.

(b) Assuring inclusion of SB and SDB firms in all solicitations where appropriate.

(c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs.

(d) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of P.L. 95-507.

(e) Monitoring attainment of proposed goals.

(f) Reviewing solicitations to remove statements, clauses, etc., which may tend to prohibit SB and SDB participation.

(g) Additions to (or deletions from) to the duties specified above are as follows:

3. The following efforts will be taken to assure that small and small disadvantaged concerns will have an equitable opportunity to compete for subontracts:

(a) Outreach efforts will be made as follows:

(i) Contacts with minority and small business trade associations. Name at least three (3).

(ii) Contacts with business development organizations. Name at least two (2).

(iii) Attendance at small and minority business procurement conferences and trade fairs. Provide examples.

(b) The following internal efforts will guide and encourage buyers:

(i) Workshops, seminars, and training programs will be conducted.

(ii) Activities will be monitored to evaluate compliance with this subcontracting plan.

(c) Small and disadvantaged business source lists, guides, and other data identifying small and disadvantaged business vendors will be maintained and utilized by buyer in soliciting subcontract.

(d) Additions to (of deletions from) the above listed efforts are as follows:

4. The bidder (offeror) agrees that the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors except Small Business Concerns who receive subcontracts in excess of $500,000 or in the case of a contract for the construction of any public facility, $1,000,000, will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits of subcontractors facilities or review applicable records and subcontracting program progress.

5. The bidder (offeror) agrees to submit such periodic reports and cooperate in any studies surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan.

6. The bidder (offeror) agrees to maintain at least the following types of records to document compliance with this subcontracting plan:

(a) Small and disadvantaged business source lists, guides and other data indentifying SB and SDB vendors.

(b) Organizations contacted for small and disadvantaged business sources.

(c) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (1) whether small business was solicited, and if not, why not; (2) whether small disadvantaged business was solicited, and if not, why not; and (3) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, etc. Attendance at small and minority business procurement conferences and trade fairs.

(e) Records to support internal activities to guide and encourage buyers: workshops, seminars, training programs, etc. Monitoring activities to evaluate compliance.

(f) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

(g) Records to be maintained in addition to the above are as follows:

Signed:
Typed Name:
Title:
Date:

[FR Doc. 84-9526 Filed 4-5-84; 3:01 p.m.]
BILLING CODE 4310-10-M

federal register

Tuesday
April 10, 1984

Part V

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An Interim Rule, which was published at 48 FR 9214, is adopted as a final rule with minor amendments. The Interim Rule, as adopted and amended by the final rule, sets forth the regulations which are applicable to the 1983 through 1985 crops of peanuts and provides for: (1) Establishing state farm poundage quotas and farm yields; (2) providing for transfers of quota; (3) determining undermarketings; (4) identifying marketings; (5) determining marketing penalties; and (6) handling marketing violations. The amendments to the Interim Rule include changes relating to the requirements for spring and fall transfers of poundage quotas. Also, a number of clarifying changes have been made and clearance numbers assigned by the Office of Management and Budget have been added with regard to the information collection requirements of the Paperwork Reduction Act.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Kathryn Cuff (ASCS), 202-447-7406. A Final Regulatory Impact Analysis describing the options considered in developing this rule is available upon request.

SUPPLEMENTARY INFORMATION: This Final Rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that 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, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The title and number of the Federal assistance program to which this Final Rule applies are: Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

The information collection requirements contained in the regulations adopted by this Final Rule and the information requiests authorized by the regulations have been reviewed and approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0560-0003, 0560-0006, 0560-0014, 0560-0027, and 0560-0051. The regulations in §§ 729.231, 729.244, 729.265, 729.278, 729.279, 729.286, 729.290, 729.291, 729.292, 729.293, 729.294, 729.300, 729.301, 729.302, 729.303, and 729.306 have been modified in this Final Rule to reflect the appropriate clearance numbers.

Comments and Determinations

On March 4, 1983, an Interim Rule was published in the **Federal Register** (48 FR 9214) setting forth regulations governing peanut quotas and the marketing of peanuts for the 1983-85 crop years. A 60-day comment period was provided. Six comments were received. Of these six comments, one was from a state farm bureau, one was from a county office of an agricultural organization and four were from individuals. With the exception of one comment, the comments were addressed to those provisions of the Interim Rule relating to reductions in peanut quotas. Those provisions of the Interim Rule were promulgated in accordance with section 358 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. § 1358), which provides for the annual reductions in the national peanut quota for each of the 1982 through 1985 crops of peanuts. Specifically, section 358 provides for reducing the 1981 national quota of 1,440,000 tons to: 1,200,000 tons in 1982, 1,167,300 tons in 1983, 1,134,700 tons in 1984, and 1,100,000 tons in 1985. Section 358 further provides that the national poundage quota shall be apportioned among individual States on the basis of each State's share of the national poundage quota for the 1981 marketing year. The State poundage quota is then apportioned to individual farms. The yearly reductions in the State poundage quotas are to be made "insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe * * * by reducing the farm poundage quota for each farm in the State to the extent that the farm poundage quota has not been produced on such farm."

Under section 358, three categories of quotas were identified for a "priority" in making reductions—i.e., three categories were identified as being subject to reduction before reductions of quotas not falling into one of the identified categories. For the 1983 crop year only, the Interim Rule followed the practice adopted previously for the 1982 crop of only breaking out separately for reduction purposes so-called "category 1" and "category 2" quotas. "Category 1" quotas are quotas which are subject to reduction to the extent that there was inadequate tillable cropland on the farm to produce the quota in the preceding year. Quotas fall in category 2 to the extent that the quota has not been produced in two of the three preceding crop years. The third special reduction category provided for in section 358 is "category 3" which consists of quotas which have, in two of the three preceding years, been produced by another operator on a farm to which the poundage quota (or the acreage allotment on which the poundage quota was based) was transferred by lease. This category, as in 1982, was not broken out separately for quota reductions for the 1983 crop.

The Interim Rule provided with respect to the 1983 crop that, to the extent the reductions in categories 1 and 2 were not sufficient in any State to produce the reduction required for that crop year, a uniform factor was applied to all quotas in the State (including those partially reduced by category 1 and category 2 reductions) to achieve the additional reduction.

One comment opposed the reduction method adopted for the 1983 crop. Four comments supported the provisions of the Interim Rule with respect to this issue.

The opposing comment objected that the 1983 crop reduction method utilized with respect to the handling of "category 3" quotas (leased quotas) did not serve to preserve the quota of active producers and was contrary to the statutory intent of section 358. However, the focus of the quota reduction provisions of section 358 is not, as such, on whether the quota holder is an active peanut producer. The leasing of a quota by itself does not result in that quota being considered to be in a "priority" reduction category. On the contrary, a quota is considered to be in "category 3" only to the extent that the quota is produced by a different operator on another farm to which it was transferred by lease. Further, reductions in quotas

which have been leased and produced on a different farm by another operator can directly and adversely affect producers who have produced the leased quota. Those producers who have recently purchased farms with quotas or have purchased a quota independently of the purchase of a farm are also affected since all such purchases carry with them the leasing history of the quota. In any event, section 358 specifically provides that quota reductions shall be made on such fair and equitable basis as the Secretary may prescribe by regulation. As indicated in the supplementary information of the Interim Rule, breaking out "category 3" quotas would have, as a result of the state-by-state method in which quota reductions must be apportioned, produced widely disparate treatment for farms otherwise identically situated. More generally, breaking out "category 3" quotas separately for the 1983 crop year would have produced a windfall in favor of certain producers with tillable acreage over other producers with tillable acreage based on cropping decisions which may have been temporary and fortuitous. On weighing these and the other factors set forth in the Interim Rule, it was determined that "category 3" quotas should not be broken out for purposes of making quota reductions for the 1983 crop year. This determination effectively allowed a second year in which "category 3" quotas were not broken out separately for purposes of making quota reductions pursuant to section 358. For the reasons given in the Interim Rule, it continues to be the view of the Department that the policy adopted with respect to "category 3" quotas for the 1983 crop year was appropriate. The Interim Rule, published on March 4, 1983, provided that "category 3" quotas would be broken out separately for the purpose of making quota reductions for the 1984 and 1985 crop years. Two comments objected to breaking out "category 3" quotas for those crop years. One of the two comments generally expressed the desire to have the 1982-and 1983-crop quota reduction methods continued for the 1984 crop of peanuts. The other comment pointed out that, because of advancing age or lack of planting and harvesting equipment or other reasons, some quota holders may not be able to actually produce the quota. No other comments were received with respect to this policy.

The Department has again carefully considered, but rejected, a continuation for the 1984 and 1985 crop years of the policy which was adopted for the 1982 and 1983 crop years with respect to not breaking out "category 3" quotas for the purpose of making quota reductions. That policy was a temporary measure adopted pursuant to the Secretary's discretionary authority under section 358 of the 1938 Act in order to implement the required reductions on a fair and equitable basis. It was not intended to abrogate the clear statutory schedule of priorities for reduction of poundage quotas as set forth in section 358. Because "category 3" quotas were not broken out separately for reduction purposes for two crop years, no reductions in "category 3" quotas will now result strictly from cropping activities which preceded the enactment in 1981 of the statutory provisions with respect to quota reductions. Also, the effect of quota losses on local have dissipated. Also, the effect of quota losses on local communities, where there are high concentrations of "category 3" quotas, is reduced since the amount of quotas considered to be in "category 3" for the 1984 crop is considerably less in all major peanut growing regions than at the time the policy with respect to the 1982 and 1983 quota reductions was adopted. While under the priorities set forth in section 358 quotaholders in "category 4" were in the most protected category, they shared any quota reductions in the previous two crop years with quotaholders in "category 3." The Department believes that a continuation of that policy would clearly be inequitable to quotaholders in "category 4."

With respect to the comments concerning the difficulties which may be encountered by some producers in producing their own crops due to their age or a lack of peanut equipment, such difficulties do not justify an exemption from quota reductions. The clear purpose of section 358 is not to have the reduced national quota serve as a vehicle for maintaining leasing income but rather to have the reduced national quota apportioned to those quotaholders who are active peanut producers.

The remaining issue raised by the comments involves a suggestion by one commenter that peanut quotas should be apportioned on the basis of production history. Apportionment of quotas on the basis of production history would require new legislation. This comment, therefore, goes beyond the scope of this rulemaking procedure.

For the foregoing reasons, it has been determined that the Interim Rule should be adopted as a final rule, except for the following revisions. First, § 729.244(a), which relates to "spring transfers" of quota, has been revised. Spring transfers are planting-season transfers. The Interim Rule specified that such transfers must be made by the "final planting date" established by the State Agricultural Stabilization and Conservation (ASC) Committee so long as the date is not later than June 15. It has been reported that the establishment of a final planting date might be misconstrued by producers as being a date by which peanuts must actually be planted, rather than simply a last date for spring transfers. To avoid such confusion, the rule has been revised to delete the reference to the establishment of a final planting date. The substance of the rule, however, has been maintained. As revised, § 729.244 provides that the last date for spring transfers shall be the date established by the State Committee but not later than June 15. Also, the reference to the establishment of a last transfer date for spring transfers of quota by area has been removed to avoid having § 729.244 misconstrued as requiring State committees to establish different dates for areas within the same State regardless of the degree of difference in planting conditions. The revised rule would permit State committees to establish a different final Spring transfer date for counties or areas within the same State if it is determined to be necessary for program administration. The language of § 729.244(a) involving the establishment of a final planting date was referred to in § 729.244, § 729.246, § 729.248. These sections have been revised accordingly.

Section 729.248(b) has been revised by breaking out separately for purposes of clarity the requirements applicable to receiving and transferring farms. Also, the provisions of § 729.248(b), which specified that the transferring farm had to meet certain planting requirements before making such a transfer, have been amended to limit these requirements to those farms which have previously been the recipient of a transfer of quota during that crop year. This revision is intended to clarify the intent of the regulations to avoid the use of the fall transfer allowance as a means of brokering quotas. Also with respect to fall transfers, § 729.248(a) has been modified slightly for the purpose of clarity.

In addition, the following sections have been revised: (1) Section 729.244(b) has been reorganized and modified slightly for purposes of clarity, and a new provision added to explicitly address the handling of permanent transfers in relation to quota reductions; (2) § 729.300 has been revised to reflect the change in the form number for the

Application for Peanut Handler Card from MO-96 to ASCS-1008; (3) in the second sentence of § 729.304, the word "producer" has been corrected to read "production"; and (4) OMB clearance numbers, as indicated, have been added to comply with the information collection requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 729

Poundage quotas, Penalties, Reporting requirements.

Final Rule

PART 729—[AMENDED]

Accordingly, the Interim Rule published at 48 FR 9214 on March 4, 1983, is adopted as a Final Rule, with the following changes:

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended, Secs. 801, 802, 803, 804, 805, 91 Stat. 944, as amended, 95 Stat. 1248 (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c-1).

1. In § 729.224, paragraph (b)(1)(iii) text is revised and a new paragraph (b)(1)(iv) is added to read as follows:

§ 729.224 Determination of farm poundage quota.

* * * * *

(b) *1984 and 1985 Poundage quota reductions*—(1) *Poundage quota reductions.*

* * * * *

(iii) *Quota transferred by lease and produced on another farm by a different farm operator.* Except as provided in Subparagraph (E), the preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that any of the following situations apply:

(A) For two or more of the years of the base period, the farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts, i.e., leases filed by the time prescribed in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984; and (*2*) was produced or considered produced on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm; or

(B) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced on the receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm for 2 or more years of the base period; and (*2*) was not 100 percent produced or considered produced in 1 or more of the same base period years.

(C) The farm poundage quota: (*1*) Was not 100 percent produced or considered produced in 2 or more of the years of the base period; (*2*) was transferred, in whole or in part, as a result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced in part on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm in 1 or more of the same base period years.

(D) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for 1983 and 1984 crop years and was produced or considered produced on the receiving farm and the operator of the receiving farm was a different person than the operator of the transferring farm for 1 or more of the base period years; and (*3*) was not 100 percent produced or considered produced in 1 or more of the other base period years.

(E) In applying the provisions of subparagraphs (A) through (D), if the constitution of the farm differs from the constitution of the farm for any one or more of the base period years, an individual determination shall be made for separately identifiable farm tracts as they were constituted for that year of the base period.

(iv) If a farm received quota by permanent transfer during any year of the base period, an individual determination shall be made for the quota permanently transferred as if such quota was established on a separate farm for each year of the base period.

2. Section 729.231 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.231 Request for reconsideration or appeal.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560-0006)

3. The text of § 729.244 (a) and (b) is revised to read as follows:

§ 729.244 Filing record of transfer and time for filing.

* * * * *

(a) *Record of transfer filed during the normal planting period (spring transfers.)* In order to be effective during the normal planting period, a record of transfer shall be filed by the date established by the State committee, but not later than June 15. A record of transfer filed after the date established by the State committee but prior to July 1 may be considered to be timely filed if the county committee finds that: (i) The lease was agreed upon no later than the date established by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(b) *Record of transfer filed after the normal planting period (fall transfers.)* A record of transfers which in filed after the date established by the State committee for "spring tranfers" pursuant to § 729.244(a) shall not become effective unless filed not later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that: (1) The transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(Approved by the Office of Management and Budget under Control No. 0560-0051.)

4. The text of § 729.246(d) is revised to read as follows:

§ 729.246 Transfer not to be approved.

* * * * *

(d) Transfers for more than one marketing year filed after the date established by the State committee for

"spring transfers" pursuant to § 729.244(a).

* * * * *

5. The text of § 729.248 (a) and (b) is revised to read as follows:

§ 729.248 Transfer to and from the same farm (subleasing).

(a) *Record of transfer filed during the normal planting period.* The county committee shall not approve a record of transfer which is filed (or considered filed) on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if the approval would result in a transfer both to and from either the transferring or receiving farm during the period ending on such date of the same crop year, except that in such instance a record of tranfer may be approved if a poundage quota has been transferred temporarily from a farm for one or more years (and the transfer remains in effect) and the farm is combined subsequent to such temporary transfer with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Record of transfer filed after the normal planting period.* The county committee shall not approve a temporary transfer of poundage quota which is filed (or considered filed) after the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if it would result in a temporary transfer both to and from the farm during the period beginning on such date and ending on December 31. In order for any transfer filed after the date established by the State committee to be approved by the county committee, the following conditions must be met, as applicable:

(1) *Receiving farm.* The operator of the receiving farm must certify and the county committee must determine that the poundage quota to be transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year.

(2) *Transferring farm.* In those instances where the transferring farm had quota transferred by lease to the farm on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a), the operator of the transferring farm must certify and the county committee must determine that: (i) The acreage of peanuts planted on the transferring farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the larger of the current farm yield or the highest actual yield for the farm in any one of the preceding three years; and (ii) the production of peanuts on the transferring farm was limited to less than the effective farm poundage quota because of conditions beyond the control of the producer.

6. Section 729.265 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.265 Issuance of Cards

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

7. Section 729.278 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.278 Reduction or waiver of penalty.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

8. Section 729.279 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.279 Appeals.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

9. Section 729.286 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.286 Identification of producer marketings.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

10. Section 729.290 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.290 Report of marketing green peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

11. Section 729.291 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.291 Report of acquisition of seed peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

12. Section 729.292 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.292 Peanuts marketed to persons who are not registered handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

13. Section 729.293 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.293 Report on marketing card.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

14. Section 729.294 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.294 Report of production and disposition.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

15. Section 729.300 is amended by revising the last sentence of (b), revising (c), and adding the OMB reference following the section to read as follows:

§ 729.300 Registration of handlers.

* * * * *

(b) *Persons acquiring noninspected peanuts.* * * * A person may register by completing an ASCS–1008, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing an ASCS–1008, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State ASCS Office in the marketing area in which the handler is located.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

16. Section 729.301 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.301 Records and reports required of handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

17. Section 729.302 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.302 Persons engaged in more than one business.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

18. Section 729.303 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.303 Penalty for failure to keep records and make reports.

* * * * *

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

19. The second sentence of § 729.304, is corrected to read as follows:

§ 729.304 Examination of records and reports.

* * * Upon request from any such person, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

20. Section 729.306 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.306 Information confidential.

* * * * *

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

Signed at Washington, D.C., on April 6, 1984.

Everett Rank,

Administrator.

[FR Doc. 84–9752 Filed 4–6–84; 4:45 pm]

BILLING CODE 3410–05–M

federal register

Tuesday
April 10, 1984

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 113 and 114

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 113 and 114

[Docket No. 83-100]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements and Production Requirements for Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would reduce restrictions on movement of partially prepared veterinary biological products, or serials of complete fractions of combination products between licensed establishments by removing the requirement for common ownership and by removing the provision limiting bulk shipments to inactivated materials only. Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This would permit licensure of establishments for preparation and shipment of veterinary biological products for further manufacture.

DATE: Comments must be received on or before June 10, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MC 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, USDA, APHIS, VS, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have a significant effect on the economy and would not result in 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 the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions would reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in a significant economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This is especially true of products of synthetic origin or those resulting from new advanced technologies. Producers of the immunogenic portions of these products frequently have no facilities or marketing capability for final use products. Firms capable of completing and marketing final use products often do not have the capability for preparing these basic immunogenic components. At present, 9 CFR 114.3(d) restricts combined use of separate producing establishments to those licensed establishments under common ownership. It also restricts bulk shipments to inactivated materials. This proposed revision would permit the use of licensed facilities not under common ownership to share in the preparation of final use products and would remove the restrictions prohibiting shipment of live cultures. Such proposed changes would permit use of facilities where most economical methods are available for preparation of fractions to be used in products of other licensed manufacturers or for export. If adopted, establishments could be licensed for preparation of final use products, as at present, for products for further manufacture, or for both.

Provisions for exporting bulk liquid products and concentrates in large containers is made in 9 CFR 112.8. Tests to be conducted on these products are prescribed in 9 CFR 113.10. This proposed revision would extend the provisions for testing to include bulk material shipped for further manufacture.

The Department would require that the methods of shipment would not result in harm to the product or the environment.

Alternatives

The alternatives considered are:

1. Not amend the regulations. This would result in continued restriction on manufacturers to prepare only final use products unless under common ownership with a firm with extended capability. Certain useful products would not be licensed or would be unacceptably expensive. Therefore, this alternative was not chosen.

2. Amend the regulations. This would result in adequately regulated products to be prepared in more than one establishment not under common ownership, permitting most economical and effective use of production facilities. The number of useful products available at acceptable cost would be increased. Therefore, this alternative was accepted.

List of Subjects in 9 CFR Parts 113 and 114

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Section 113.10 would be revised to read:

§ 113.10 Testing of bulk material for export or for further manufacture.

When a product is prepared for export in large multiple-dose containers as provided in § 112.8(d) or (e) of this subchapter or for further manufacturing purposes as provided in § 114.3(d) of this subchapter, samples of the bulk material shall be subjected to all required tests prescribed in the filed Outline of Production or Standard Requirements for the product. Samples of concentrated liquid product shall be diluted to a volume equal to the contents of the sample times the concentration factor prior to initiating potency tests.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

In § 114.3, paragraph (d) would be revised to read:

§ 114.3 Separation of establishments.

* * * * *

(d) Partially prepared products or serials of completed products for further manufacture may be moved from one licensed establishment to another licensed establishment or exported under conditions prescribed in an Outline of Production filed with Veterinary Services. Licensed products may be prepared and recommended for final use, for further manufacturing purpose, or both. All serials shall be subject to the requirements for testing and release specified in § 113.6 or § 113.10 and to the requirements for identification specified in § 114.4.

* * * * *

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 3rd day of April 1984.

D. F. Schwindaman,

Acting Deputy Administrator Veterinary Services.

Doc. 84-9528 Filed 4-9-84; 11:03 am]

BILLING CODE 3410-34-M

6

Reader Aids

Federal Register

Vol. 49, No. 70

Tuesday, April 10, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

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Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13001-13098 2
13099-13332 3
13333-13464 4
13465-13670 5
13671-13860 6
13861-14076 9
14077-14290 10

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12471) 13101
12002 (See EO 12470) 13099
12046 (Amended by EO 12472) 13471
12214 (See EO 12470) 13099
12413 (Amended by EO 12471) 13101
12470 13099
12471 13101
12472 13471

Proclamations:
4707 (Amended by EO 12471) 13101
4768 (Amended by EO 12471) 13101
5170 13129
5171 13465
5172 13467
5173 13469

7 CFR

225 14077
226 14077
28 13861
301 13131
421 13132
440 13671
447 14078
510 13668
631 13133
713 13479
729 14282
907 13481
910 ..... 13675, 13861
925 14083
944 14083
989 13133
1942 13862

Proposed Rules:
53 13704
54 13704
981 14112
989 13883
800 13148
1004 13541
1033 13541
1036 13541
1040 13543
1049 13541
1062 13541
1064 13541
1065 13541
1124 13887

8 CFR

100 13134
103 13134

9 CFR

81 13863

Proposed Rules:
113 14288
114 14288

12 CFR

226 13482

13 CFR

107 13864
121 13675

14 CFR

39 13486-13488
71 ..... 13333, 13334, 13489
93 13676
298 14085

Proposed Rules:
36 13375
39 ..... 13543, 13545
47 13375
71 13545
91 13375
255 13156

15 CFR

368-399 13099
385 13135
399 ..... 13135, 14087
924 13335
929 13335
935 13335
936 13335
937 13335
938 13335

16 CFR

13 ..... 13676, 14087
305 13136
436 13677
1115 13820
1145 14095

Proposed Rules:
1700 13888

17 CFR

200 ..... 13678, 13865
230 13336
240 13867

Proposed Rules:
3 13378
4 13378
140 13378

19 CFR

18 13490
162 13492
271 13337

Proposed Rules:
271 13378

Ch. II 13379

20 CFR

404 13872
416 13872
Proposed Rules:
404 13710

21 CFR

1 13338
73 13137
74 ..... 13138, 13339
81 ..... 13138, 13339-13344
82 ..... 13138, 13339
101 ..... 13338, 13679
136 13690
175 13138
177 13138
178 13345
182 13139
184 ..... 13139, 13346
442 13492
510 13493
520 14103
522 13872
529 13483
546 14103
556 13872
558 ..... 13142, 13348, 13494
Proposed Rules:
100 13157
131 13713
161 13157
182 13157
184 13157

22 CFR

301 13692
502 13693

24 CFR

Proposed Rules:
203 14113
213 14113
234 14113
235 14113

26 CFR

31 13143
Proposed Rules:
1 13157

29 CFR

1601 13873
Proposed Rules:
1910 ..... 13380, 14116
1928 13714

30 CFR

913 13494
942 13349
Proposed Rules:
904 13157
913 13380
914 13891
934 13158
935 13159
942 13546

31 CFR

103 13548
129 14054

32 CFR

701 13350
840 13521
888 13521
889 13522
Proposed Rules:
865 13382

33 CFR

100 13522
165 ..... 13695, 13696
Proposed Rules:
100 13715
110 13160
401 13551

34 CFR

503 14072

36 CFR

223 14103
Proposed Rules:
13 13160
50 13387

37 CFR

1 13462
5 13462

38 CFR

36 ..... 13350, 13553
Proposed Rules:
21 13892

39 CFR

601 13352

40 CFR

52 ..... 13144, 13145, 13522
60 ..... 13646, 13874-13878
61 ..... 13658, 13875-13878
81 ..... 13145, 13352
145 13525
271 ..... 13526, 13697
461 13879
465 14104
600 13632
Proposed Rules:
52 ..... 13174, 13893, 14145
60 ..... 13392, 13654
86 14244
100 14244
271 13716

41 CFR

101-17 14105
101-41 14105
14-2 13353
Proposed Rules:
101-41 14147

42 CFR

420 13698
435 13526
436 13526

43 CFR

4 13353
PLO 6529 14107

44 CFR

64 13879
67 13353

45 CFR

5b 14107
1180 14108

46 CFR

310 13364

47 CFR

Ch. I 13366
0 13366
67 14111
73 ..... 13370, 13371, 13534

48 CFR

Ch. 1 13881
Ch. 3 13960
Ch. 14 14252
7 13236

49 CFR

1310 13881
Proposed Rules:
Ch. VII 13719
175 13717
394 13555

50 CFR

23 13538
602 13372
655 13373
671 13373
Proposed Rules:
17 ..... 13556, 13558, 13720, 14149, 14152
649 14153

List of Public Laws

Last List April 6, 1984

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