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federal register

Thursday
January 3, 1985

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Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Transportation Department

Aviation Safety
Federal Aviation Administration

Endangered and Threatened Species
National Oceanic and Atmospheric Administration

Freedom of Information
Interior Department

Government Procurement
Defense Department

Hazardous Materials Transportation
Research and Special Programs Administration

Longshoremen
Employment Standards Administration

Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

Prisoners
Prisons Bureau

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Civil Aeronautics Board

Semiconductor Chip Products
Copyright Office, Library of Congress

Surface Mining
Surface Mining Reclamation and Enforcement Office

Wine
Alcohol, Tobacco and Firearms Bureau

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Presidential Documents

Title 3—

The President

Executive Order 12496 of December 28, 1984

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of chapter 53 of title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans' Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5 of the United States Code, the rates of basic pay are adjusted, as set forth at Schedule 4 attached hereto and made a part hereof, for members of the Senior Executive Service.

Sec. 3. *Executive Salaries.* The Executive Salary Cost-of-Living Adjustment Act (Public Law 94–82; 89 Stat. 419) provides for adjustments in rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 153(a), 172(b), and 252) at Schedule 7.

Sec. 4. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of Section 601 of Public Law 98–525, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowance for quarters (37 U.S.C. 403(a)) are adjusted, as set forth at Schedule 8 attached hereto and made a part hereof, for members of the uniformed services.

Sec. 5. *Effective Date.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services, and all other adjustments of salary or rates of basic pay provided for herein, shall be effective on the first day of the first applicable pay period beginning on or after January 1, 1985.

Sec. 6. Executive Order No. 12456 of December 30, 1983, as amended, is superseded.

Ronald Reagan

THE WHITE HOUSE,
December 28, 1984.

Billing code 3195-01-M

SCHEDULE 1--GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,339	$9,650	$9,961	$10,271	$10,582	$10,764	$11,071	$11,380	$11,393	$11,686
2	10,501	10,750	11,097	11,393	11,521	11,860	12,199	12,538	12,877	13,216
3	11,458	11,840	12,222	12,604	12,986	13,368	13,750	14,132	14,514	14,896
4	12,862	13,291	13,720	14,149	14,578	15,007	15,436	15,865	16,294	16,723
5	14,390	14,870	15,350	15,830	16,310	16,790	17,270	17,750	18,230	18,710
6	16,040	16,575	17,110	17,645	18,180	18,715	19,250	19,785	20,320	20,855
7	17,824	18,418	19,012	19,606	20,200	20,794	21,388	21,982	22,576	23,170
8	19,740	20,398	21,056	21,714	22,372	23,030	23,688	24,346	25,004	25,662
9	21,804	22,531	23,258	23,985	24,712	25,439	26,166	26,893	27,620	28,347
10	24,011	24,811	25,611	26,411	27,211	28,011	28,811	29,611	30,411	31,211
11	26,381	27,260	28,139	29,018	29,897	30,776	31,655	32,534	33,413	34,292
12	31,619	32,673	33,727	34,781	35,835	36,889	37,943	38,997	40,051	41,105
13	37,599	38,852	40,105	41,358	42,611	43,864	45,117	46,370	47,623	48,876
14	44,430	45,911	47,392	48,873	50,354	51,835	53,316	54,797	56,278	57,759
15	52,262	54,004	55,746	57,488	59,230	60,972	62,714	64,456	66,198	67,940
16	61,296	63,339	65,382	67,425	69,468*	71,511*	73,554*	75,597*	77,640*	
17	71,804*	74,197*	76,590*	78,983*	81,376*					
18	84,157*									

* The rate of basic pay payable to employees at these rates is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$52,262	$42,348	$34,315	$27,806	$22,531	$20,142	$18,006	$16,097	$14,390
2	53,830	43,618	35,344	28,640	23,207	20,746	18,546	16,580	14,822
3	55,445	44,927	36,405	29,499	23,903	21,369	19,103	17,077	15,266
4	57,108	46,275	37,497	30,384	24,620	22,010	19,676	17,590	15,724
5	58,821	47,663	38,622	31,296	25,359	22,670	20,266	18,117	16,196
6	60,586	49,093	39,780	32,235	26,120	23,350	20,874	18,661	16,682
7	62,404	50,566	40,974	33,202	26,903	24,051	21,500	19,221	17,182
8	64,276	52,083	42,203	34,198	27,710	24,772	22,145	19,797	17,698
9	66,204	53,645	43,469	35,224	28,542	25,515	22,809	20,391	18,229
10	67,940	55,255	44,773	36,281	29,398	26,281	23,494	21,003	18,776
11	67,940	56,912	46,116	37,369	30,280	27,069	24,199	21,633	19,339
12	67,940	58,620	47,500	38,490	31,188	27,881	24,925	22,282	19,919
13	67,940	60,378	48,925	39,645	32,124	28,718	25,672	22,950	20,517
14	67,940	62,189	50,393	40,834	33,088	29,579	26,442	23,639	21,132

SCHEDULE 3--DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES
VETERANS ADMINISTRATION

Section 4103 Schedule

Chief Medical Director	$94,375***
Deputy Chief Medical Director	90,532**
Associate Deputy Chief Medical Director	86,713*
Assistant Chief Medical Director	84,157*

	Minimum	Maximum
Medical Director	$71,804*	$81,376*
Director of Nursing Service	71,804*	81,376*
Director of Podiatric Service	61,296	77,640*
Director of Chaplain Service	61,296	77,640*
Director of Pharmacy Service	61,296	77,640*
Director of Dietetic Service	61,296	77,640*
Director of Optometric Service	61,296	77,640*

Physician and Dentist Schedule

Director grade	$61,296	$77,640*
Executive grade	56,599	73,582*
Chief grade	52,262	67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292

Nurse Schedule

Director grade	$52,262	$67,940
Assistant Director grade	44,430	57,759
Chief grade	37,599	48,876
Senior grade	31,619	41,105
Intermediate grade	26,381	34,292
Full grade	21,804	28,347
Associate grade	18,763	24,388
Junior grade	16,040	20,855

Clinical Podiatrist and Optometrist Schedule

Chief grade	$52,262	$67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292

*** The rate of basic pay is limited to the rate payable for level III of the Executive Schedule, which is $73,600.

** The rate of basic pay is limited to the rate payable for level IV of the Executive Schedule, which is $72,300.

* The rate of basic pay is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE SCHEDULE

ES-1	$61,296
ES-2	63,764
ES-3	66,232
ES-4	68,700
ES-5	70,500
ES-6	72,300

SCHEDULE 5--VICE PRESIDENT AND EXECUTIVE SCHEDULE

Vice President	$97,900
level I	86,200
level II	75,100
level III	73,600
level IV	72,300
level V	68,700

SCHEDULE 6--CONGRESSIONAL SALARIES

Senators	$75,100
Members of the House of Representatives	75,100
Delegates to the House of Representatives	75,100
Resident Commissioner from Puerto Rico	75,100
President pro tempore of the Senate	85,000
Majority leader and minority leader of the Senate	85,000
Majority leader and minority leader of the House of Representatives	85,000
Speaker of the House of Representatives	97,900

SCHEDULE 7--JUDICIAL SALARIES

Chief Justice of the United States	$104,700*
Associate Justices of the Supreme Court	100,600*
Circuit Judges	80,400*
District Judges	76,000*
Judges of the Court of International Trade	76,000*
Judges of the United States Claims Court	70,200
Bankruptcy Judges	68,400

* Under section 140 of Public Law 97-92 (95 Stat. 1200), salaries for Federal judges and Justices of the Supreme Court are not increased.

Schedule 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
Part I--Monthly Basic Pay
(Years of service computed under 37 U.S.C. 205)

Pay Grade	Commissioned Officers						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
0-10 1/	$5069.40	$5247.90	$5247.90	$5247.90	$5247.90	$5449.20	$5449.20
0-9	4493.10	4610.70	4708.80	4708.80	4708.80	4828.50	4828.50
0-8	4069.50	4191.30	4290.90	4290.90	4290.90	4610.70	4610.70
0-7	3381.60	3611.40	3611.40	3611.40	3773.10	3773.10	3992.10
0-6	2506.20	2753.70	2934.00	2934.00	2934.00	2934.00	2934.00
0-5	2004.60	2354.10	2516.40	2516.40	2516.40	2516.40	2592.90
0-4	1689.60	2057.40	2194.80	2194.80	2235.30	2334.30	2493.30
0-3 2/	1570.20	1755.30	1876.50	2076.30	2175.60	2254.20	2375.70
0-2 2/	1369.20	1495.20	1796.10	1856.70	1895.70	1895.70	1895.70
0-1 2/	1188.60	1237.50	1495.20	1495.20	1495.20	1495.20	1495.20

Pay Grade	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-10 1/	$5866.20*	$5866.20*	$6285.90*	$6285.90*	$6706.50*	$6706.50*	$7124.70*
0-9	5029.50	5029.50	5449.20	5449.20	5866.20*	5866.20*	6285.90*
0-8	4828.50	4828.50	5029.50	5247.90	5449.20	5667.60	5667.60
0-7	3992.10	4191.30	4610.70	4927.50	4927.50	4927.50	4927.50
0-6	2934.00	3033.60	3513.30	3693.00	3773.10	3992.10	4329.60
0-5	2732.10	2915.10	3133.20	3313.20	3413.40	3532.50	3532.50
0-4	2633.70	2753.70	2874.60	2954.10	2954.10	2954.10	2954.10
0-3 2/	2493.30	2554.80	2554.80	2554.80	2554.80	2554.80	2554.80
0-2 2/	1895.70	1895.70	1895.70	1895.70	1895.70	1895.70	1895.70
0-1 2/	1495.20	1495.20	1495.20	1495.20	1495.20	1495.20	1495.20

* Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,724.90 per month.

1/ While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $7,861.20* regardless of cumulative years of service computed under section 205 of title 37, United States Code.

2/ Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or as warrant officers.

Pay Grade	Commissioned Officers credited with over 4 years' active duty as an enlisted member and/or warrant officer					
	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14
O-3	$2076.30	$2175.60	$2254.20	$2375.70	$2493.30	$2592.90
O-2	1856.70	1895.70	1955.70	2057.40	2136.00	2194.80
O-1	1495.20	1597.20	1656.00	1716.00	1775.70	1856.70

	Over 16	Over 18	Over 20	Over 22	Over 26
O-3	$2592.90	$2592.90	$2592.90	$2592.90	$2592.90
O-2	2194.80	2194.80	2194.80	2194.80	2194.80
O-1	1856.70	1856.70	1856.70	1856.70	1856.70

Pay Grade	Warrant Officers						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
W-4	$1599.60	$1716.00	$1716.00	$1755.30	$1835.10	$1916.10	$1996.50
W-3	1453.80	1577.10	1577.10	1597.20	1616.10	1734.30	1835.10
W-2	1273.50	1377.60	1377.60	1417.80	1495.20	1577.10	1636.80
W-1	1061.10	1216.50	1216.50	1317.90	1377.60	1436.70	1495.20

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
W-4	$2136.00	$2235.30	$2313.90	$2375.70	$2452.50	$2534.70	$2732.10
W-3	1895.70	1955.70	2014.20	2076.30	2157.00	2235.30	2313.90
W-2	1696.80	1755.30	1816.80	1876.50	1935.90	2014.20	2014.20
W-1	1557.30	1616.10	1675.80	1734.30	1796.10	1796.10	1796.10

Pay Grade	Enlisted Members						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E-9 [1]	-----	-----	-----	-----	-----	-----	$1860.60
E-8	-----	-----	-----	-----	-----	$1560.60	1605.00
E-7	$1089.60	$1176.00	$1219.80	$1262.40	$1305.60	1347.00	1390.20
E-6	937.20	1021.80	1064.40	1109.70	1150.80	1192.80	1236.60
E-5	822.60	895.50	938.70	979.80	1044.00	1086.30	1129.80
E-4	767.40	810.30	857.70	924.60	960.90	960.90	960.90
E-3	723.00	762.30	793.20	824.70	824.70	824.70	824.70
E-2	695.40	695.40	695.40	695.40	695.40	695.40	695.40
E-1 [2]	620.40	620.40	620.40	620.40	620.40	620.40	620.40
E-1 [3]	573.60	573.60	573.60	573.60	573.60	573.60	573.60

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E-9 [1]	$1902.90	$1945.80	$1990.50	$2034.90	$2074.50	$2183.70	$2395.80
E-8	1647.00	1690.20	1734.60	1774.80	1818.30	1925.10	2139.90
E-7	1433.40	1498.20	1540.80	1584.00	1604.70	1712.40	1925.10
E-6	1300.20	1341.00	1384.20	1405.20	1405.20	1405.20	1405.20
E-5	1171.20	1192.80	1192.80	1192.80	1192.80	1192.80	1192.80
E-4	960.90	960.90	960.90	960.90	960.90	960.90	960.90
E-3	824.70	824.70	824.70	824.70	824.70	824.70	824.70
E-2	695.40	695.40	695.40	695.40	695.40	695.40	695.40
E-1 [2]	620.40	620.40	620.40	620.40	620.40	620.40	620.40
E-1 [3]	573.60	573.60	573.60	573.60	573.60	573.60	573.60

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2,912.10

[2] Applies to personnel who have served 4 months or more on active duty.

[3] Applies to personnel who have served less than 4 months on active duty.

Part II--Basic Allowance for Subsistence Rates

Officers (per month): $106.18

Enlisted Members (per day):

	E-1 (less than 4 months)[1]	All Other Enlisted
When on leave or authorized to mess separately:	$4.68	$5.06
When rations-in-kind are not available:	$5.29	$5.72
When assigned to duty under emergency conditions where no messing facilities of the United States are available:	$7.00	$7.57

[1] Applies to personnel who have served less than 4 months on active duty.

[FR Doc. 84-34018
Filed 12-31-84; 12:57 pm]
Billing code 3195-01-C

Part III--Monthly Basic Allowance For Quarters Rates

Pay Grade	Without dependents		With dependents
	Full rate 1/	Partial rate 2/	
Commissioned officers:			
0-10	$537.30	$50.70	$660.90
0-9	537.30	50.70	660.90
0-8	537.30	50.70	660.90
0-7	537.30	50.70	660.90
0-6	493.20	39.60	599.40
0-5	465.30	33.00	552.30
0-4	426.60	26.70	504.90
0-3	345.30	22.20	420.90
0-2	278.10	17.70	360.90
0-1	238.50	13.20	323.70
Warrant officers:			
W-4	$391.20	$25.20	$453.90
W-3	330.30	20.70	405.90
W-2	297.00	15.90	379.50
W-1	251.40	13.80	330.90
Enlisted members:			
E-9	$315.30	$18.60	$429.90
E-8	292.20	15.30	400.50
E-7	249.30	12.00	372.60
E-6	221.40	9.90	337.80
E-5	204.90	8.70	300.30
E-4	177.60	8.10	259.50
E-3	172.50	7.80	238.50
E-2	146.40	7.20	238.50
E-1	133.50	6.90	238.50

1/ Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

2/ Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

Note: The rate for a member who is entitled to a basic allowance for quarters on or after January 1, 1985, and who was entitled to such an allowance on December 31, 1984, shall not be less than the rate that was in effect for that member on December 31, 1984 (unless the member holds a lower grade than held on that date or has changed from a "with dependents" to a "without dependents" status).

Presidential Documents

Proclamation 5291 of December 28, 1984

To Modify Duties on Certain Articles Used in Civil Aircraft and on Globes

By the President of the United States of America

A Proclamation

1. Pursuant to section 234 of the Trade and Tariff Act of 1984 (P.L. 98–573), I have determined that modifications in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), as set forth in the Annex to this proclamation, are appropriate in order to provide duty-free coverage comparable to the expanded coverage provided by other signatories to the Agreement on Trade in Civil Aircraft (the Agreement; 31 UST (pt. 1) 619) as set forth in the Annex to the March 22, 1984, decision of the Committee on Civil Aircraft under the Agreement.

2. I authorize the United States Trade Representative, or his designee, on behalf of the United States of America, to implement the portion of the consolidated Annex to the Agreement which pertains to articles imported into the United States, recorded in the decision of March 22, 1984, upon his determination that the additional duty-free treatment to be accorded by the United States, as set forth in the Annex to this proclamation, is comparable to the expanded coverage provided by other signatories to the Agreement.

3. Pursuant to section 167(b) of the Educational, Scientific, and Cultural Materials Importation Act of 1982 (96 Stat. 2439, 19 U.S.C. 1202 note), I have determined that it is in the interest of the United States to implement, on a temporary basis, the duty-free treatment for such articles as are provided for in the amendment to section 163(c)(3) of that Act made by section 191(c)(2)(B) of the Trade and Tariff Act of 1984. These articles were omitted through technical error from the 1982 Act implementing the Nairobi Protocol (97th Congress, 1st Session, Senate Treaty Document 97–2, p. 9) to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, and from Proclamation 5021 of February 14, 1983 (48 F.R. 6883), providing temporary duty reductions to certain imported articles. I have also determined, pursuant to section 604 of the Trade Act of 1974 (19 U.S.C. 2483), to modify the TSUS to provide temporary duty reductions to such additional articles.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 234 of the Trade and Tariff Act of 1984, section 167(b)(2) of the Educational, Scientific, and Cultural Materials Importation Act of 1982, and section 604 of the Trade Act of 1974, do proclaim that:

(1) Item 960.70 in part 4 of the Appendix to the TSUS is modified by inserting after "models)" the language ", globes,". This modification is effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after November 14, 1984.

(2) The TSUS are further modified as provided in the Annex to this proclamation, attached hereto and made a part hereof.

(3) The modifications to the TSUS made by paragraph (2) shall be effective with respect to articles entered, or withdrawn from warehouse for consump-

tion, on and after the date designated by the United States Trade Representative or his designee and published in the **Federal Register** along with his determination that the duty-free coverage provided by the United States is comparable to the expanded coverage provided by other signatories to the Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of December, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

Billing code 3195-01-M

ANNEX

MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.
2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS are modified as follows:

1. The following new item is inserted immediately after item 646.95:

	[Door . . .]		
"646.96	Automatic door closers, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	45% ad val."

2. Item 660.87 is superseded by:

	[Non-electric . . .:]		
	[Other]		
"660.87	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	27.5% ad val."

3. Item 660.99 is superseded by:

	[Pumps . . .:]		
	[Other]		
"660.99	Pumps for liquids, operated by any kind of power unit, and parts thereof, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

4. Item 661.08 is superseded by:

	[Air . . .:]		
	[Fans . . .:]		
	[Other]		
"661.08	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

5. Item 661.14 is superseded by:

	[Air . . .:]		
	[Compressors, . . .:]		
	[Other . . .]		
"661.14	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

6. Item 661.17 is superseded by:

	[Air . . .:]		
	[Other]		
"661.17	Air pumps and vacuum pumps, and parts thereof; all the foregoing if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

7. Item 661.22 is superseded by:

	[Air-conditioning . . .]		
"661.22	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)....	Free	35% ad val."

8. Item 661.37 is superseded by:

	[Refrigerators . . .]		
"661.37	Refrigerators and refrigerating equipment; heat exchange units, and parts thereof, for refrigerators and refrigerating equipment; all the foregoing if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

9. The superior heading to items 680.46 through 681.24 is modified by deleting ", aircraft,".

10. The following new item is inserted immediately after item 680.62:

	[Gear . . .:]		
	[Gear . . .:]		
	[Other . . .]		
"680.63	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	65% ad val."

11. Item 681.01 is superseded by:

	[Gear . . .:]		
	[Pulleys . . .:]		
"681.01	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	45% ad val."

12. Item 681.18 is superseded by:

	[Gear . . .:]		
	[Torque . . .]		
"681.18	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	27.5% ad val."

13. Item 681.24 is superseded by:

	[Gear . . .:]		
	[Chain . . .]		
"681.24	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	45% ad val."

14. The following new item is inserted immediately after item 682.05:

	[Generators, . . .:]		
	[Transformers:]		
	[Rated . . .]		
"682.06	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	35% ad val."

15. (a) Items 683.05, 683.06, 683.07, and 683.08 are redesignated as 683.01, 683.02, 683.12, and 683.13, respectively.

(b) The following new item is inserted immediately after item 683.02:

	[Storage . . .:]		
	[Lead-acid . . .:]		
	[12-volt . . .]		
"683.03	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	40% ad val."

(c) The following new item is inserted immediately after item 683.13:

	[Storage . . .:]		
	[Lead-acid . . .:]		
	[Other, . . .]		
"683.14	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	40% ad val."

(d) The following new item is inserted immediately after item 683.16:

	[Storage . . .:]		
	[Other]		
"683.17	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	40% ad val."

16. The following new item is inserted immediately after item 708.09:

	[Lenses, . . .:]		
	[Not . . .:]		
"708.10	Any article described in the foregoing items 708.01 through 708.09, inclusive, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	The column 2 rate applicable in the absence of this item"

17. The following new item is inserted immediately after item 708.29:

	[Lenses, . . .:]		
	[Mounted:]		
"708.30	Any article described in the foregoing items 708.21 through 708.29, inclusive, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6).....	Free	The column 2 rate applicable in the absence of this item"

18. (a) Items 711.75, 711.76, and 711.77 are redesignated as 711.70, 711.71, and 711.72, respectively.

(b) The following new item is inserted immediately after item 711.72:

	[Pressure . . .:] [Flow . . .:] [Parts] If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free	65% ad val."
"711.73			

19. Item 711.81 is superseded by:

	[Pressure . . .:] [Other] If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free	35% ad val."
"711.81			

20. Item 712.00 is superseded by:

	[Revolution . . .:] [Other] Speedometers and tachometers, and parts thereof; all the foregoing if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free	35% ad val."
"712.00			

21. Item 712.52 is superseded by:

	[Electrical . . .:] [Other:] [Other] If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free	40% ad val."
"712.52			

[FR Doc. 84-34019
Filed 12-31-84; 12:58 pm]
Billing code 3195-01-C

Presidential Documents

Executive Order 12497 of December 29, 1984

President's Advisory Committee on Mediation and Conciliation

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the life of the President's Advisory Committee on Mediation and Conciliation, it is hereby ordered that Section 4(b) of Executive Order No. 12462 of February 17, 1984, is amended to read: "The Committee shall terminate on September 30, 1985, unless sooner extended."

Ronald Reagan

THE WHITE HOUSE,
December 29, 1984.

[FR Doc. 84-34020
Filed 12-31-84; 12:59 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 2
Thursday, January 3, 1985

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

Agricultural Marketing Service

7 CFR Parts 905, 907, 908, 912, 913, 917, 928, and 932

Expenses and Rates of Assessment for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes assessment rates under Marketing Orders 905, 907, 908, 912, 913, 917, 928, and 932. In addition, this regulation increases the 1984 fiscal year budget for California olives, and the 1984–85 budget for California plums. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: January 1, 1984–December 31, 1984 (§ 932.218); March 1, 1984–February 28, 1985 (§ 917.238); August 1, 1984–July 31, 1985 (§§ 905.223, 912.224, and 913.220); November 1, 1984–October 31, 1985 (§§ 907.222 and 908.224); January 1, 1985–December 31, 1985 (§§ 928.214, and 932.219).

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 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, Acting Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities because they would not measurably affect costs for the directly regulated handlers.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses and rates of assessment is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective dates.

List of Subjects 7 CFR Parts 905, 907, 908, 912, 913, 917, 928, and 932

Marketing Agreements and Orders, Oranges, Grapefruit, Tangerines, and Tangelos, Florida, Oranges (Navel and Valencia), California, Arizona, Grapefruit, Indian River District and Interior District, Florida, Pear, Plums, Peaches, California, Papayas, Hawaii, Olives, California.

Therefore, new §§ 905.223, 907.222, 908.224, 912.224, 913.220, 928.214, and 932.219 are added, and §§ 917.238 (49 FR 32323) and 932.218 (49 FR 1), are amended to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.223 Expenses and assessment rate.

Expenses of $229,270 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.004 per 4/5 bushel carton of fruit is established for the fiscal period ending July 31, 1985.

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

§ 907.222 Expenses and assessment rate.

Expenses of $1,123,085 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.021 per carton of Navel oranges is established for the fiscal year ending October 31, 1985.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.224 Expenses and assessment rate.

Expenses of $623,655 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.024 per carton of Valencia oranges is established for the fiscal year ending October 31, 1985.

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

§ 912.224 Expenses.

Expenses of $3,270 by the Indian River Grapefruit Committee are authorized for the fiscal period ending July 31, 1985. Unexpended funds from the fiscal period ended July 31, 1984, may be carried over as a reserve to fund such expenses.

PART 913—GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

§ 913.220 Expenses and assessment rate.

Expenses of $5,725 by the Interior Grapefruit Marketing Committee are authorized and an assessment rate of $0.00075 per carton (4/5 bushel) of grapefruit is established for the fiscal year ending July 31, 1985.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.238 Expenses and Assessment rate.

Expenses of $2,710,081 by the Plum Commodity Committee are authorized, and an assessment rate of $0.17 per No. 22 D standard lug box of plums is authorized for the fiscal year ending February 28, 1985.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.214 Expenses and assessment rate.

Expenses of $660,007 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.006 per pound of papayas is established for the fiscal year ending December 31, 1985. Unexpended funds may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.218 Expenses and assessment rate.

Expenses of $2,075,382 by the California Olive Committee are authorized for the fiscal year January 1, 1984 through December 31, 1984. The rate of assessment for that period shall be established at $42.76 per ton, less any amount credited pursuant to § 932.45 but not to exceed $16.54 per ton. Unexpended funds may be carried over as a reserve.

§ 932.219 Expenses and assessment rate.

Expenses of $2,162,360 by the California Olive Committee are authorized for the fiscal year January 1, 1985, through December 31, 1985. The rate of assessment for that period shall be established at $28.05 per ton, less any amount credited pursuant to § 932.45 but not to exceed $8.25 per ton. Unexpended funds may be carried over as a reserve.

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

Dated: December 28, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–133 Filed 1–2–85; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 241

[Regulation ER–1401; Economic Reg.; Amdt. No. 54 to Part 241; Docket 42114]

Uniform System of Accounts and Reports for Large Certificated Air Carriers; Reduction in Reporting Requirements

Editorial Note: FR Doc. 84–33742, published in the **Federal Register** of Monday, December 31, 1984, renamed Chapter II of Title 14 as follows: "Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings)."

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB reduces for large certificated air carriers the financial and statistical reporting requirements contained in the CAB Form 41 Report by eliminating fourteen reporting schedules, decreasing the level of detail reported on many of the remaining Form 41 schedules and eliminating the filing of the nine remaining statements of carrier accounting procedures. These actions more closely align the data collected with the data needed to administer CAB and other Federal programs that will continue after sunset.

DATES: *Adopted:* November 28, 1984. *Effective:* January 1, 1985.

The reporting requirements contained in this rule are subject to Office of Management and Budget clearance which has been granted under clearance number 3024–0013 until June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042 or after December 31, 1984, Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI–10, Room 4125, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–7372.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking adopted April 10, 1984, the Board proposed to reduce the reporting requirements contained in Part 241 of its Economic Regulations (EDR–472, 49 FR 18509, May 1, 1984). This proposal was intended to reduce the level of financial and statistical data collected from large certificated carriers to better align the data collected with the data needed to administer the CAB programs that will continue after sunset. The proposal was also intended to ensure the continued post-sunset collection of air carrier data that are needed by other Federal agencies in administering their programs. Essentially, EDR–472 proposed to:

1. Eliminate fourteen Form 41 schedules;[1]

2. Eliminate the remaining nine accounting procedures statements;

3. Eliminate the reporting of twelve months-to-date data on certain Form 41 schedules;

4. Transfer data elements between Form 41 schedules to facilitate the elimination of schedules; and

5. Simplify Form 41 schedule data formats by eliminating and consolidating data elements.

Fifteen comments were received in response to the rulemaking notice. Of the fifteen, five were from commercial consulting firms,[2] three from certificated air carriers,[3] three from State and local government agencies,[4] two from other Federal agencies,[5] and one each from the Air Transport Association of America (on behalf of fifteen member airlines) [6] and the Douglas Aircraft Company. The comments filed by the Department of Transportation, Douglas Aircraft Company, Merrill Lynch Capital Markets and Roberts and Associates support the post-sunset level of reporting proposed by EDR–472; however, the remainder of the comments suggest certain modifications to the proposed changes. These modifications are discussed below under separate captions.

Post Sunset Need for Recurrent Reporting

The Air Transport Association of America (ATA) and Delta filed comments questioning the need for recurrent reporting as proposed in EDR-472. Both comments propose replacing recurrent Form 41 reporting with *ad hoc* reporting that is tailored to each regulatory program and is applied only

[1] Schedules B-3 "Statement of Changes in Stockholders" Equity, "B-5 "Property and Equipment," B-7(b) "Flight Equipment Acquired", B-10 "Unamortized Developmental and Preoperating Costs," B-13 "Summary of Projected Financial Commitments and Releated Deposits," B-41 "Receivables, Payables and Investments Relating to Affiliates and Other Investment Data," B-43.1 "Aircraft Inventory Data," B-46 "Long-Term and Short-Term Nontrade Debt," P-3 "Transport Revenues: Depreciation and Amortization; Nonoperating Income and Expenses (Net)," P-3(a) "Income Taxes," P-4 "Transpport-Related Revenues and Expenses: Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes on Prior Years: Explanation of Prior Period Adjustments and Dividends Declared," P-5.1(a) "Statement of Aircraft Operating Expenses," P-5(a) "Components of Flight Equipment Depreciation," and T-2(b) "Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft."

[2] Greyhound Leasing and Financial Corporation; Merrill Lynch Capital Markets; Roberts and Associates, Inc.; Simat, Helliesen & Eichner, Inc. and TAI Inc.

[3] Continental Air Lines, Inc. Delta Air Lines, Inc. and Northwest Airlines, Inc. Continental filed to concur with ATA's comments. Delta and Northwest joined in ATA's comments and also filed on their own behalf.

[4] Arizona Department of Revenue, Port of Oakland and State Tax Commissioner—North Dakota.

[5] Department of Defense (Military Airlift Command) and Department of Transportation.

[6] Comments of the Air Transport Association were filed on behalf of: American Airlines, Inc., Capitol Air, Delta Air Lines, Inc., Frontier Airlines Inc., Hawaiian Airlines, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Inc., Piedmont Airlines, PSA-Pacific Southwest Airlines, The Flying Tiger Line, Inc., United Air Lines, USAir, Western Air Lines and Wien Air Alaska.

to those carriers participating in a particular program. While Delta suggests total replacement of Form 41 with *ad hoc* reporting, ATA would limit the applicability of such reporting to examinations of merger proposals, interlocking relationships, airline agreements and antitrust immunity requests. For essential air service, ATA suggests that reporting be required only of carriers participating in the program. Similarly, ATA states that only those carriers engaging in foreign air transportation should be covered by the Board's proposal and only to the extent of their international operations.

While the Board recognizes the value of *ad hoc* reporting in reducing carrier reporting burden, it believes that the nature of the Federal programs that are supported by Form 41 data require a certain minimum level of recurrent reporting. For example, the Department of Commerce's Bureau of Economic Analysis (BEA) uses, among other things, carrier cost data on Form 41 Schedules P-5, P-6, P-7 and P-8 in developing the estimation of the gross national product (GNP), the international transactions accounts, the input-output tables of the United States, which trace the purchases and sales among all industries in the economy and the constant dollar GNP by industry series. This data requirement lends itself to recurrent reporting which serves to maintain an air transportation industry data base that is suitable for economic trend analysis. The Form 41 data needed by BEA are also used by the Board in its essential air service and international programs as well as by the Department of the Air Force in establishing military airlift contract rates.

As can be seen from the above examples of Form 41 data use, it would be impractical to tie carrier reporting to program participation due to the cross utilization of carrier data by the various Federal programs. In past times of greater industry regulation, the Board did, whenever possible, limit reporting to only those carriers participating in a particular program. For example, the submission of Form 41, Schedules B-10 "Unamortized Developmental and Preoperating Costs" and P-5(a) "Components of Flight Equipment Depreciation" was limited to only those carriers participating in the Board's section 406 subsidy program. With the elimination of this program, both schedules have been proposed for elimination.

As to ATA's comment that carriers engaging in foreign air transportation should be covered by the proposed reporting level only to the extent of their international operations, the Board's staff uses total system data in monitoring a carrier's fitness for conducting international operations. Total system and entity data are also used in evaluating international service proposals and developing recommendations for international route awards.

It must be kept in mind that the recent enactment of the Civil Aeronautics Board Sunset Act of 1984[7] transfers to DOT the Board's authority to determine the fitness of applicants for certificated authority to conduct domestic operations. Fitness determinations to conduct international operations were previously transferred to DOT by the Airline Deregulation Act of 1978. The legislation also transfers to DOT the Board's authority to monitor the fitness of certificated air carriers on a continuous basis. This transfer of authority further supports the need for recurrent Form 41 data and causes the addition of domestic fitness monitoring to the other Federal program needs for Form 41 data that were enumerated in EDR-472. The transfer of this authority to DOT will not increase carrier reporting burden since the proposed level of reporting already includes sufficient Form 41 data to enable DOT to monitor carrier fitness both domestically and internationally.

Any additional data needs regarding an individual carrier's fitness can be addressed by DOT through *ad hoc* reporting. The Board envisions DOT also using *ad hoc* reporting to supplement the Form 41 data base when needed to examine merger proposals, interlocking relationships, airline agreements and antitrust immunity requests.

In a final comment on post-sunset reporting, ATA recommends that reporting levels for all scheduled carriers should be the same except in support of specific programs that are not applicable to all carriers. As previously explained, the overlapping data requirements of the various Federal agencies do not lend themselves to establishing individual reporting levels by program.

It should also be mentioned that the Board is precluded from setting a uniform reporting level for all scheduled carriers by the provisions of the Regulatory Flexibility Act,[8] which require Federal agencies to consider tiering or other approaches to fit regulatory and informational requirements to the size of the business. Moreover, the Office of Management and Budget's (OMB) general information collection guidelines [9] generally preclude OMB approval of an information collection unless the collecting agency has taken all practicable steps to develop separate and simplified requirements for small businesses. In view of these facts, the Board has decided to continue its policy of tiering, whenever possible, its information collections to the size of the reporting carrier.

Proposed Level of Post-Sunset Reporting

EDR-472 proposed the elimination of 14 of the current 42 CAB Form 41 schedules. This represents a 33 percent reduction in the number of schedules in the CAB Form 41 Report. ATA and Delta have commented that they estimate that the proposed changes would not significantly reduce carrier reporting burden. ATA questions the significance of the reporting reductions by stating four of the schedules are not relevant under deregulation because they support regulatory programs no longer in existence, such as domestic ratemaking and section 406 subsidy. Delta, on the other hand, refers to the reductions as "modest." Putting the proposed rule into perspective, it should be remembered that EDR-472 is the third in a series of rules whose objective was to reduce carrier reporting to the level needed to support the post-sunset administration of Federal programs that require aviation data.

The Board feels that the one-third reduction in the number of Form 41 schedules is significant, particularly when viewed in terms of pre- versus post-deregulation reporting levels. In 1978, Form 41 comprised a total of 61 schedules; the 28 schedules that will remain after sunset represent a 54 percent reduction in the total number of Form 41 schedules, which the Board views as a very material reduction. ATA's comment does recognize one of the Board's major objectives prior to sunset, namely the elimination of any data collections that are no longer needed in a deregulated environment.

Northwest in its comments has questioned the Board's advocacy of retaining specific Form 41 schedules. The carrier states that since the Board will sunset on December 31, 1984, it is Northwest's view that, at a minimum, only the schedules which were requested by agencies existing after December 31, 1984, should be considered for retention. Northwest's comment does not recognize that the Board's remaining

[7] Pub. L. 98-443, October 4, 1984.

[8] Pub. L. 96-354, September 19, 1980.

[9] Section 1320.6 of 5 CFR Part 1320.

regulatory functions at December 31 will be transferring to other Federal agencies. EDR–472 proposes the continued collection of those data that are now used in administering these transferring programs. Moreover, DOT, which will assume responsibility for virtually all of the Board's programs at sunset, has filed comments supporting the proposed level of reporting. For these reasons, the Board believes that its position on continued reporting is reasonable and necessary.

In EDR–472, the Board recognized that the Securities and Exchange Commission (SEC) requires carriers registered with SEC to report periodic balance sheet and income statement data; however, the Board noted that it is unable to use the carrier financial statements filed with SEC because such statements are required to be presented on a consolidated basis while Federal data requirements relate solely to the air transportation operations of the corporate entity.

Northwest has pointed out in its comments that SEC data does identify business segments and that SEC filings should provide the financial data needed by the Federal sector. While Northwest is correct in stating that SEC does collect some profit and loss data broken down by business segments, the data collected still cannot be used by the Board. First of all, generally accepted accounting principles (GAAP) require publicly held carriers to include in their published annual financial statements to their stockholders only summary business segment data. These data include operating revenues, operating expenses, operating profit or loss, depreciation and amortization, capital expenditures and amount of identifiable assets. This reporting of totals by category does not provide the level of detailed reporting needed to administer Board and other Federal programs. An example of this is that business segment data are not broken down by carrier operating entity. Revenue and expense data by entity is used by the Board in computing the Standard Foreign Fare Level which is analyzed and adjusted on a recurrent basis.

Secondly, carrier financial reports to SEC and its shareholders may be based on a fiscal year basis and not the calendar year basis used for Form 41 reporting. Uniform reporting by calendar years provides for uniformity and consistency in the aviation industry's data bases, which enhances the decision-making process. It would be impossible to draw reasonable comparisons or to monitor the industry results of 80 carriers whose reporting periods are not uniform.

Reporting of Carrier Operating Expense Data

EDR–472 included for public comment revised Schedules P–6 "Operating Expenses by Objective Groupings" and P–7 "Operating Expenses by Functional Groupings." Both schedules were intended to allow carriers to report more highly summarized operating expense functions and objective account groupings. For example, Group II air carriers would report salaries for general management personnel as a single line item rather than allocating the expense to several functional expense categories, such as, maintenance burden, passenger service, aircraft and traffic servicing, and general and administrative. The revised P–6 and P–7 schedules were developed to replace the current Form 41, Schedules P–6, P–7 and P–8, which require carriers to report operating expense data by detailed account classifications that are allocated by function.

Comments on the reporting of operating expense data were filed by ATA, Delta, Northwest and the Department of the Air Force (DOAF).

Delta recommends eliminating the reporting of operating expense data on Schedules P–6 and P–7 and states that accumulating and maintaining operating expense data by functional account categories is very burdensome and such data are no longer needed since domestic pricing has been deregulated. Northwest states that, under deregulation, very little of the operating expense data now reported on Schedules P–6, P–7 and P–8 are needed and then only for comparative purposes, which the carrier views as an inappropriate justification in a deregulated environment.

As noted in EDR–472, DOAF's Military Airlift Command uses the detailed operating expense data now reported on Schedules P–6, P–7 and P–8 to establish rates for awarding airlift service contracts to civil air carriers. The Department of Commerce's Bureau of Economic Analysis also uses data from Schedules P–6, P–7 and P–8 in developing its benchmark input-output tables of the United States, which trace purchases and sales among all industries in the economy. The Board uses operating expense data in evaluating a carrier's operating plan in initial and continuing fitness proceedings, certification proceedings and international route awards. The Board also uses Schedules P–6, P–7 and P–8 data in performing breakeven analyses of individual carrier international operations for use in bilateral negotiations. Further, these data are used by the Board in establishing and monitoring subsidy rates in the essential air service program. To support the administration of these regulatory functions, the Board has decided that continued reporting of carrier operating expense data after sunset is necessary.

Turning to Delta's comment on burden, the Board does recognize the degree of reporting burden involved in allocating operating expenses. Because of this, the Board's staff developed the less detailed revised P–6 and P–7 schedules that were included in EDR–472. ATA, Delta and DOAF commented on the revised schedules.

ATA, speaking on behalf of sixteen carriers,[10] commented that it opposes the revised schedules because they would place an undue burden on the carriers because the revised forms are used for reporting essentially the same data now reported, but in a different manner. ATA further commented that if the Board desires different forms of data presentation for its convience, it should accept the burden of rearranging the data. Delta supported ATA's comments and stated that substituting the revised P–6 and P–7 schedules would be more burdensome and time consuming than filing the current Schedules P–6, P–7 and P–8.

Delta further stated that the revised Schedule P–7 is particularly objectionable because the functional account totals are not based on the Board's Uniform System of Accounts, which could place expense allocations at the mercy of individual carrier judgment and questionable assumptions.

As a data user, DOAF has objected to replacing the current reporting formats with the revised schedules because the Military Airlift Command's ratemaking function would be greatly hindered. DOAF stated that the revised schedules do not have the complete breakout of operational accounts by function which is needed to validate allowable charges by the carriers.

In view of the opposition of a significant number of Group III carriers (see footnote 10), which represents those carriers most affected by any changes in operating expense reporting, and DOAF's need for the current level of reporting, the Board has decided to

[10] American, Capitol, Continental, Delta, Flying Tiger, Frontier, Hawaiian, Northwest, Ozark, Pan American, Piedmont, PSA, United, USAir, Western and Wien. This group of carriers represents 15 of 24 or 63 percent of the largest carriers (Group III) reporting to the Board.

retain the current level of reporting. Accordingly, carriers will continue to report their operating expense data on Form 41 Schedules P-6, P-7 and P-8.

Reporting Results of Operations

Delta and Northwest oppose the continued reporting of interim income statement data on Schedule P-1(a) "Interim Operations Report." Delta states that neither the Board nor any successor agency has a Congressional mandate to monitor either airline pricing or the financial health of the industry. Delta goes on to say that meaningful analysis of Schedule P-1(a) data is not possible because P-1(a) includes only system revenue and expense data. Northwest states that using P-1(a) data to monitor the impact of fare changes on yields and unit costs is of no concern to the Board as far as domestic operations are concerned.

The limited financial data reported on Schedule P-1(a) are used in the Board's essential air service and international programs. The need for these data has been futher cemented by the CAB Sunset Act of 1984, which transfers to DOT at sunset the Board's mandate to monitor the continuing fitness of individual air carriers.

As to Delta's comment regarding the usefulness of the P-1(a) for analytical purposes, the Board reiterates its statement made in EDR-472 that the monthly reporting of the system revenue and expense data provides a better causal relationship between fare changes and their effects on yield and unit costs than quarterly reporting, which obscures monthly cyclical swings. It should be noted that DOT has filed comments in support of the need for continuing the collection of Schedule P-1(a). Based on the above data needs, the Board has decided to continue Schedule P-1(a) as a Form 41 reporting requirement.

Reporting of Employment Statistics

Northwest has questioned the need for continuing to collect data on the number of employees on Schedules P-1(a) and P-10. Under the provisions of section 43 the Airline Deregulation Act of 1978 (Pub. L. 95-504), the Board is required to determine whether a "qualifying dislocation" has occurred within the guidelines of the employee protection program. In order to perform this legislated function, the Board needs data on carrier employment levels. The Airline Deregulation Act also transfers the Board's authority in this matter to the Department of Transportation on January 1, 1985.

Northwest observed in its comments that the employee protection program has been found unconstitutional by a District Court. The Board is aware of this decision in *Alaska Airlines* v. *Donovan*, C.A. No. 84-0485; however, the Justice Department has filed a notice of appeal and section 43 currently remains in effect.

The Department of Labor also uses the employment data collected by the Board in developing productivity measures for the air transportation industry. Furthermore, the Board is responsible for filing, under a United States treaty obligation, certificated air carrier employment data with the International Civil Aviation Organization.

Based on these regulatory needs, and the fact the above court decision has been appealed, the Board has decided to continue the collection of carrier employment data on Schedules P-1(a) and P-10.

Reporting of Fuel Data

Northwest has questioned the need for reporting fuel data by commenting that the Board's use of Schedule P-12 "Fuel Consumption by Type of Service and Entity" in administering the international program is not apparent to the carrier. Fuel data are used in establishing and adjusting international passenger fare, cargo, and mail rates. Fuel expense represents a significant component in adjusting the Standard Foreign Fare Level. Fuel data are also used in evaluating the reasonableness of carrier operating plans in fitness reviews, route awards and carrier selection cases. Domestically, fuel data are used in setting Canadian transborder and intra-Alaska passenger fares and rates, evaluating carrier operating plans during fitness investigations, monitoring trends in the cost of fuel and reviewing fare levels and operating costs at essential air service points. In view of the above fuel data requirements and DOT's comments supporting the continued collection of carrier fuel data after sunset, Schedule P-12 has been retained in the final rule.

Aircraft Inventory Data

EDR-472 proposed to continue collecting certain basic data about the composition of carrier aircraft fleets on Schedules B-7 "Airframes and Aircraft Engines Acquired," B-8 "Flight Equipment Retired" and B-43 "Inventory of Airframes and Aircraft Engines."

Northwest questions the need for the Board to continue collecting data pertaining to airframe and aircraft engine acquisitions, retirements and inventories. The carrier believes the proper source for collecting such data should be the airframe and engine manufacturers. Beyond this source, Northwest states that the Federal Aviation Administration's (FAA) registry office could provide the Board with the aircraft inventory data it needs.

During the development of EDR-472, we identified and analyzed the potential alternative data sources for Form 41 data and analyzed their capability for fulfilling the Board's data needs. Aircraft manufacturers and FAA registry data were included in the Board staff's analysis of available data sources. Both sources were rejected as being deficient in meeting the Board's needs.

Manufacturers would be able to provide cost data on airframes and aircraft engines only as delivered; however, the Board needs actual cost data to the carriers which include post-delivery modification and/or re-engining. The Board also needs the date when an aircraft is placed in service. The originating source for this data element is the carriers.

Turning now to FAA data on aircraft registrations, the FAA's aircraft registry provides information on aircraft ownership, but not necessarily who is operating the aircraft. FAA data does not identify the operators of aircraft under an operating, capital or sub-lease arrangement. It should be noted that over the years the FAA has looked to the Board for data regarding carrier aircraft fleet composition.

Neither the manufacturers nor the FAA can provide a breakdown of each carrier's aircraft inventory by operating and nonoperating aircraft, such data can only be obtained from the carriers themselves. Being able to identify operating and nonoperating aircraft is important in evaluating carrier fitness by facilitating the analysis of a carrier's operating plans and aircraft fleet utilization. Lacking an acceptable alternative data source, the Board has decided to continue Schedules B-7, B-8 and B-43 as part of the Form 41 data base.

In addition to Northwest's comments, DOAF recommended in its comments that proposed Schedule B-43 "Aircraft Inventory Data" be revised to include a space for reporting the number of aircraft engines, which the Military Airlift Command uses in its ratemaking function to calculate depreciation of and investment in flight equipment. DOAF is concerned that only mentioning the reporting of engine inventory data in the reporting instructions and not including any reference to aircraft engines on the face of the schedule could result in some confusion as to whether engine inventory data should be reported.

In evaluating DOAF's recommendation, the Board's staff reviewed recent Form 41 filings to ascertain if the reporting instruction reference was sufficient to ensure the submission of engine data. The staff discovered a general trend toward excluding engine data as part of the carrier total aircraft inventory. Because of this, the Board concurs with DOAF's argument that including a column for reporting the number of aircraft engines would help eliminate any confusion over whether engine data should be reported. Accordingly, such a column has been added to Schedule B-43. To further clarify the nature of the data to be reported on the revised Schedule B-43, the Board has also decided to change the title of the schedule to read: "Inventory of Airframes and Aircarft Engines."

During its review of airframe and aircraft engine reporting, the staff also discovered that there is apparently some confusion on the part of reporting carriers as to how individual aircraft types, models and cabin designs should be reported. To avoid further confusion, the reporting instructions for Schedule B-43 have been clarified in the final rule.

In related comments, the State Tax Commissioner of the State of North Dakota opposes the elimination of Schedule B-7(b) "Flight Equipment Acquired" and T-2(b) "Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft." The Arizona Department of Revenue and Simat, Helliesen & Eichner oppose the elimination of Schedule B-7 "Airframes and Aircraft Engines Acquired" as well as Schedule T-2(b). The preceeding commenters echo the position of Greyhound Leasing and Financial Corporation and TAI INC, which filed general comments opposing the elimination of data needed to determine the value of used aircraft.

Analysis of the comments outlined in the above paragraph reveals an apparent misunderstanding as to the changes that the Board proposed relative to Schedules B-7, B-7(b) and T-2(b). The effect of EDR-472 on these schedules is discussed below.

As to the opposition to the elimination of Schedule B-7, it should be noted that the Board did not propose to eliminate the schedule in its entirely. The Board did, however, recommend eliminating several of the data columns contained in the present Schedule B-7. None of the data being eliminated would preclude an analysis of the cost of aircraft acquisitions.

While EDR-472 proposed to retain Schedule B-7, it would, however, eliminate Schedule B-7(b), which is no longer filed since it was required only from those air carriers receiving section 406 subsidy. Congress eliminated the appropriation for this program effective October 1, 1982. The retention of Schedule B-7, however, would continue the collection of essentially the same data that were reported on Schedule B-7(b).

Similarly, the proposed elimination of Schedule T-2(b) is based on the retention of a material portion of the data now reported on the schedule. EDR-472 proposed to combine into a single consolidated Schedule T-2 the data elements targeted for retention on Schedules T-2(a) and T-2(b). Since the proposed changes to Schedules B-7, B-7(b) and T-2(b) would not affect the ability of the firms that commented on these changes to analyze changes in aircraft values, the revisions to these schedules have been finalized as proposed.

Reporting of Changes in Financial Position

Northwest questions the need for continuing Schedule B-12 "Statement of Changes in Financial Position" as a reporting requirement. The carrier states that the Board is the only Federal agency expressing an interest in Schedule B-12 and that, if neither DOT nor any other government agency has a need for it, then the schedule should be eliminated at sunset.

EDR-472 proposed to retain Schedule B-12 for monitoring carrier fitness and reviewing carrier applications to provide international service. In its comment, DOT, which will be administering these programs after sunset, supported the continuation of Schedule B-12. CAB Sunset Act of 1984 provides for DOT to monitor carrier fitness for both domestic and international operations. Because of these obvious regulatory needs and the fact the cash flow data provided by Schedule B-12 is not available elsewhere, the Board has decided to retain this schedule.

Reporting of Traffic Data

Northwest has commented that the traffic and capacity statistics reported on Schedules T-1(a), T-1(b), T-1(c) and T-2 are interesting, but provide very little data that are absolutely required.

As indicated in EDR-472, the statistical data reported on these schedules are needed to administer a variety of Federal programs. The Department of Commerce (DOC) uses various T-1(a) data elements in measuring the air transportation industry output for inclusion in the gross national product. DOC also uses T-1(c) data in estimating Federal Government purchases of air transport service. Traffic and capacity are an important ingredient in DOT's analysis of related revenue, cost and performance data. DOT also requires such data for developing industry-wide traffic forecasts.

The Board uses traffic and capacity data in its international, essential air service and fitness programs. Specifically, data are used to compute load factors, traffic changes, yield costs per revenue passenger-mile and available ton-mile and fuel consumption per block hour.

In view of these regulatory needs and DOT's comments in support of continuing Schedules T-1(a), T-1(b), T-1(c) and T-2, the Board has decided to retain these schedules as proposed. At the same time, the Board rejects Delta's suggestion that the Board not combine the remaining data elements from the present Schedules T-2(a) and T-2(b) into a single Schedule T-2. Delta asserts that this change would require expensive programming changes since its "T" schedules are produced by computer. The carrier recommends either eliminating entire schedules or maintaining the current level of reporting. The Board's rejection is based on its objective of not collecting more data than are required and the fact Delta filed the only dissenting comment to the proposed change.

Northwest has questioned the value of collecting airport activity statistics on Schedules T-3(a), T-3(b) and T-3(c). The carrier also suggests using as substitute data sources the Official Airline Guide (OAG), the FAA Air Traffic Activity publication and airport managements as sources for scheduled departures, aircraft handled at FAA control centers and traffic statistics.

As to the value of the information collected, the data are used by the Board to audit subsidy claims, establish international mail rates and analyze carrier operating plans. DOT uses Schedule T-3 data to develop industry-wide traffic forecasts, develop and analyze policy initiatives and allocate airport and airways development (ADAP) funds. DOT comments support the continued collection of airport activity data.

Turning to the usefulness of the alternative data sources cited by Northwest, the Board's staff has reviewed each of the above sources and concluded that none of them could be used as a substitute for the Schedule T-3 data. The OAG tapes do not contain the latest carrier schedule changes. The departure data in the FAA Air Traffic

Activity publication are broken down between commercial and military flights and does not: (1) provide data by carrier, (2) segregate revenue service from nonrevenue service, (3) collect data broken down by scheduled and nonscheduled, and (4) collect data by aircraft type. The number of airport authorities that collect data on their own behalf is not significant enough to provide a system-wide data base. The FAA relies on Schedule T–3 data in allocating ADAP funds—it does not use airport authority data for the allocation of these funds. Finally, none of the three sources mentioned by Northwest segregates data by entity of operation. Based on the above discussion, the Board has decided to retain Schedule T–3(a), T–3(b) and T–3(c), as proposed.

Reporting of All-Cargo Operations

Northwest questioned the need for continuing to collect data on all-cargo operations on Schedule T–8. The carrier stated that the all-cargo industry has been deregulated and that DOT does not need to analyze it.

By Economic Regulation ER–1349 dated July 1, 1983, the Board reduced the level of all-cargo reporting for all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued under section 418 of the Act. During the rulemaking proceeding, the Board recognized DOT's expressed need for continuing minimal all-cargo reporting in order to allow it to fulfill its responsibilities. These responsibilities included controlling the national airspace, operating a system of air traffic control and promoting the development of an effective national airport system. Uses for all-cargo data include performing cost/benefit analyses of existing and proposing rules, forecasting growth of air traffic, and estimating revenues in the Airport and Airway Trust Fund.

Since DOT is the primary user of all-cargo data and has reiterated in this proceeding its continuing support for all-cargo reporting, the Board gives material weight to DOT's views in this matter. Accordingly, Schedule T–8 will be continued as proposed.

Reporting of Market Data

Northwest objects to the requirement that it report its market data to the Board on Schedule T–9 "Nonstop Market Report." The carrier feels that Schedule T–9 is an invasion into a carrier's proprietary information and should be stopped.

Beyond the legitimate regulatory needs for Schedule T–9 data that were outlined in EDR–472, it must be noted that the CAB Sunset Act of 1984 [11] requires DOT to collect and disseminate information on civil aeronautics including ". . . information on the number of passengers traveling by air between any two points in interstate and overseeas air transportation . . ." Therefore, DOT is compelled by law to continue Schedule T–9 as a reporting requirement. In view of DOT's Congressional mandate and the above referenced compelling regulatory needs, Schedule T–9 has been retained in the final rule as proposed. The Board does note, however, Northwest's view that Schedule T–9 comprises proprietary carrier information and discusses this issue below.

Confidential Treatment of Form 41 Data

ATA, Continental, Delta and Northwest have raised the issue of confidential treatment for Form 41 data. Essentially, ATA and the above carriers object to the Board's public release of data the carriers and ATA consider to be proprietary. The data in question include profit and loss data, operating costs by aircraft type and traffic data by market.

Besides general comments by ATA, Continental and Northwest objecting to the public disclosure of Form 41 data, Delta states that competitors are not equals and some carriers stand to gain more than they will lose in reciprocal information exchanges. Delta goes on further to recommend that Form 41 data not be disclosed except (1) to Federal, state and local governmental bodies for their internal use only, when such disclosure is consistent with the governmental body's regulatory functions and (2) to parties to any proceeding before the Board or any successor agency to the extent such data are relevant and material to the issues in the proceeding upon a determination by the administrative law judge assigned to the case.

The Board believes that Delta's position, as well as the positions of ATA, Continental and Northwest, may have merit; however, this rulemaking is not the proper forum for addressing such concerns. Since the issue of confidential treatment was not addressed in EDR–472, the Board feels that the question of confidential treatment should be the subject of a separate rulemaking notice which would allow for public discussion and comment on the issues involved. The Board feels this would result in a better balancing of legitimate data interests represented by government, the public and the carriers. A rulemaking notice will also provide an excellent vehicle for considering the ancillary issues surrounding the question of whether or not confidential treatment should be granted. These issues include how comprehensive the confidential treatment blanket and how long the period of confidential treatment should be.

Reporting of Stock Ownership

Northwest has stated that it sees little need for the continued reporting of persons holding more than five percent of a carrier's capital stock or capital to the Board on Schedule G–41. The carrier contends that such data are available from SEC.

The Board realizes that SEC requires each registrant to disclose certain data regarding any person known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities.[12] However, section 407(b) of the Federal Aviation Act of 1958, as amended, requires each air carrier to submit to the Board a listing of each of its stockholders or members holding more than five percent of the entire capital stock or capital of such air carrier. The Board's stock ownership reporting is different from SEC's because (1) SEC reporting is based on the entire corporate entity on a consolidated basis, while the Board's requirement is limited to the air carrier portion of the corporate entity, and (2) SEC only collects data on publicly held corporations, while the Board is interested in significant contributors of capital in privately held air carriers.

While the CAB Sunset Act of 1984 terminates effective January 1, 1985, section 407(b) of the Federal Aviation Act of 1958, Schedule G–41 is still needed to collect ownership data for calendar year 1984. During 1985, the Board anticipates that DOT will review its need for this schedule and amend the air carrier reporting requirements, as appropriate.

Revision of Form 41 Schedules

Due to the impending transfer of the Board's Form 41 data collection function to DOT's Research and Special Programs Administration, the specific Form 41 schedules affected by this rule have been submitted to DOT's graphic arts staff for modification. The revised schedules will not be available until January 1985; however copies showing the changes to each Form 41 schedule that are promulgated by this final rule

[11] Section 5(a)(1)(B), Pub. L. 98–443.

[12] Section 403(a) of 17 CFR Part 229.

are available at the address given under **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act

For the reasons stated in EDR-472, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform System of Accounts and Reports.

Final Rule

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers* as follows:

1. Section 04 is amended by revising paragraph (a) to read:

Section 04—Air Carrier Groupings

(a) All large certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve month period are used. The following operating revenue ranges are used to establish air carrier groupings:

Carrier group	Total annual operating revenues
I	0-$75,000,000
II	$75,000,001-$200,000,000
III	$200,000,001 +

For reporting purposes, Group I air carriers are further divided into two subgroups: (1) Air carriers with total annual operating revenues between $10,000,000 and $75,000,000 and (2) air carriers with total annual operating revenues below $10,000,000.

* * * * *

2. Section 1-7 is revised to read:

Sec. 1-7 Interpretation of Accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Bureau of Carrier Accounts and Audits, for explanation, interpretation, or resolution.

Sec. 1-9 [Amended]

3. Section 1-9 is amended by removing paragraph (e).

4. Section 2-1 is amended by revising paragraph (c) to read as follows and removing paragraph (e).

Sec. 2-1 Basis of Allocation between Entities.

* * * * *

(c) For purposes of this section, investments by the air carrier in resources or facilities used in common by the regulated air carrier and those transport-related revenue services defined as separate nontransport ventures under section 1-6(b) shall not be allocated between such entities but shall be reflected in total in the appropriate accounts of the entity which predominately uses those investments. Where the entity of predominate use is a nontransport venture, the air carrier shall reflect the investment in account 1510.3, Advances to Associated Companies.

* * * * *

5. Section 2-7 is amended by revising paragraph (g) to read:

Sec. 2-7 Extraordinary Items, Discontinued Operations, Prior Period Adjustments, and Accounting Changes.

* * * * *

(g) The cumulative effect of changes in accounting principles shall be reflected in the account provided for in the determination of net income and clearly and completely described in notes to the income statement (see section 18). The amount of the cumulative effect of a change in accounting principles shall represent the difference between (a) the amount of retained earnings at the beginning of the period of the change and (b) the amount of retained earnings that would have been reported at that date if the new accounting principle had been applied retroactively for all prior periods which would have been affected by recognizing only the direct effects of a change and the related income tax effect. Financial statements of prior periods shall not be restated without the prior approval of the Director, Bureau of Carrier Accounts and Audits. Changes in accounting estimates shall be accounted for in (a) the period of change if the change affects that period only or (b) the period of change and future periods if the change affects both. Materiality should be measured both in relation to the effects of each change separately and the combined effect of all changes.

6. Section 2-12 is amended by revising paragraph (a)(6) to read:

Sec. 2-12 Acquisition and Valuation of Assets.

(a) * * *

(6) Changes in the valuation allowance for a marketable equity securities portfolio included in current assets shall be included in the determination of net income of the period in which they occur by charging account 8188.3. Accumulated changes in the valuation allowance for a marketable equity securities portfolio included in noncurrent assets shall be included in the equity section of the balance sheet in account 2900, Retained Earnings.

* * * * *

7. Section 2-13 is amended by revising paragraph (d) to read:

Sec. 2-13 Establishment of Allowances.

* * * * *

(d) Additional allowances over those prescribed in this system of accounts may be established for the purpose of allocating expense charges between calendar quarters of each accounting year in accordance with operations performed, in the event such expenditures are part of a specific program to which the air carrier is demonstrably committed and are of sufficient magnitude to significantly distort the financial results of the current quarter if expensed directly.

Sec. 2-14 [Amended]

8. Section 2-14 is amended by removing and reserving paragraph (b).

9. Section 2-17 is amended by revising paragraph (b) to read as follows and removing paragraphs (e) and (f).

Sec. 2-17 Revenue and Accounting Practices.

* * * * *

(b) Each route air carrier shall physically verify the reliability of its passenger revenue accounting practice at least once each accounting year.

* * * * *

10. Section 2-18 is amended by revising paragraphs (a), (b), and (c) to read:

Sec. 2-18 Transactions Between Members of an Affiliated Group.

(a) Unless otherwise approved by the Board's Director, Bureau of Carrier Accounts and Audits, transactions between the regulated activity of an air carrier and activities conducted by nontransport divisions or other corporate members of an affiliated group shall be recorded by the air carrier as provided in paragraphs (b) through (e) of this section 2-18.

(b) Charges for services and assets purchased by or transferred to a regulated activity of an air carrier from other activities of an affiliated group shall be recorded initially in the accounts of the regulated air carrier activity at their invoice price, if determined from a prevailing price list held out to the general public in the normal course of business. Where the services and assets received by the regulated activity of the air carrier are not marketed by the affiliated supplier to the general public under a prevailing price list, the charges recorded by the

air carrier activity for such services and assets shall be the lower of their cost to the originating activity of the affiliated group (less all applicable valuation allowances) or their estimated fair market value. In the case of charges against income for services received, as distinguished from charges for property and equipment or other assets acquired, any difference in the amount recorded and the consideration given by the air carrier shall be entered in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit. In the case of property and other assets acquired, any difference between the amount recorded and the consideration given by the air carrier shall be entered in appropriate subaccounts of account 1890 Other Assets and Deferred Charges, paralleling subaccount 88.1 Intercompany Transaction Adjustment—Credit and subaccount 89.1 Intercompany Transaction Adjustment—Debit, and shall be cleared to such income accounts through periodic amortization at rates coinciding with those applied to other associated assets.

(c) The cost, less all associated valuation allowance accumulations, of services and assets sold by or transferred from the regulated activity of an air carrier to other activities of an affiliated group shall be charged by the air carrier to either applicable transport-related revenues or capital gain income accounts, as appropriate. Where such services and assets are reflected in price lists held out to general public, the associated revenues shall be recorded at the rates, fares or charges contained therein in the appropriate transport-related services, capital gains or air transport income accounts. Where no prevailing price list is applicable, the associated revenue shall be recorded at the higher of cost or estimated fair market value of the asset or service involved. Any difference between the revenue so recorded and the agreed consideration to the air carrier shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or subaccount 89.1 Intercompany Transaction Adjustment—Debit.

* * * * *

11. Section 2-20 is amended by revising paragraphs (a)(2), (a)(3), (b)(2)(ii) and (b)(3)(ii) to read:

Sec. 2-20 Accounting for leases.

(a) * * *

(2) The lessee shall record a capital lease as an asset (Account 1695.1, Capital Leases—Flight Equipment, or Account 1695.2, Capital Leases—Other Property and Equipment) and an obligation (Account 2080, Current Obligations under Capital Leases, or Account 2280, Noncurrent Obligations under Capital Leases), at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

(3) Except for land, lessees shall amortize, by charging either Account 7076.1, Amortization—Capitalized Flight Equipment, or Account 7076.2, Amortization—Capitalized Other Property and Equipment, and crediting either Account 1696.1, Accumulated Amortization—Capitalized Flight Equipment, or Account 1696.2, Accumulated Amortization—Capitalized Other Property and Equipment, the asset recorded under a capital lease as follows: (i) If the lease either transfers ownership of the property to the lessee by the end of the lease term or contains a bargain purchase option, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policies for owned assets or (ii) if the lease does not meet either of the preceding criteria, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy except that the period of amortization shall be the lease term.

* * * * *

(b) * * *

(2) * * *

(ii) The difference between the gross investment in the lease and the sum of the present values of the two components of the gross investment shall be recorded as unearned income. The net investment in the lease shall consist of the gross investment less the unearned income. The unearned income shall be amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease. Contingent rentals, including rentals based on variables such as the prime interest rate, shall be credited to income when they become receivable.

* * * * *

(3) * * *

(ii) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. The net investment in the lease shall consist of the gross investment less the unearned income. Initial direct costs shall be charged against income as incurred, and a portion of the unearned income equal to the initial direct costs shall be recognized as income in the same period. The remaining unearned income shall be amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease. Contingent rentals, including rentals based on variables such as the prime interest rate, shall be credited to income when they become receivable.

* * * * *

12. Section 3 is revised to read:

Section 3—Chart of Balance Sheet Accounts

Balance Sheet Classifications

Name of account	General classification
Current assets:	
Cash	1010
Short-term investments	1100
Notes receivable	1200
Accounts receivable	1270
Allowance for uncollectible accounts	1290
Spare parts and supplies	1300
Allowance for obsolescence-Spare parts and supplies	1311
Prepaid items	1410
Other current assets	1420
Investments and special funds:	
Investments in associated companies	1510
Investments in investor controlled companies	1510.1
Investments in other associated companies	1510.2
Advances to associated companies	1510.3
Other investments and receivables	1530
Special funds	1550
Property and equipment	1600-1700

	Operating	Nonoperating
Airframes	1601	1701
Airframes	1601.1	1701.1
Unamortized airframe overhauls	1601.2	1701.2
Aircraft engines	1602	1702
Aircraft engines	1602.1	1702.1
Unamortized aircraft engine overhauls	1602.2	1702.2
Improvements to leased flight equipment	1607	1707
Flight equipment rotable parts and assemblies	1608	1708
Airframe parts and assemblies	[1] 1608.1	[1] 1708.1
Aircraft engine parts and assemblies	[1] 1608.5	[1] 1708.5
Other parts and assemblies	[1] 1608.9	[1] 1708.9
Flight equipment	1609	1709
Allowance for depreciation:		
Airframes	1611	1711
Aircraft engines	1612	1712
Improvements to leased flight equipment	1617	1717
Flight equipment rotable parts and assemblies	1618	1718
Flight equipment airworthiness allowance	[1] 1629	[1] 1729
Equipment	1630	1730
Furniture, fixtures and office equipment	1636	1736

	Operating	Nonoperating
Improvements to leased buildings and equipment	1639	1739
	General classification	
Buildings	1640	1740
Maintenance buildings and improvements	1640.1	1740.1
Other buildings and improvements	1640.9	1740.9
Ground property and equipment	1649	1749
Allowance for depreciation:		
Equipment	1650	1750
Improvements to leased buildings and equipment	1654	1754
Furniture, fixtures, and office equipment	1656	1756
Buildings	1660	1760
Maintenance buildings and improvements	1660.1	1760.1
Other buildings and improvements	1660.9	1760.9
Allowance for depreciation of flight equipment and ground property and equipment, and amortization of overhaul and airworthiness costs	1668	1768
Land	1679	1779
Equipment purchase deposits and advance payments	1685	1785
Construction work in progress	1689	1789
Leased property under capital leases	1695	1795
Capital leases-flight equipment	1695.1	1795.1
Capital leases-other property and equipment	1695.2	1795.2
Leased property under capital leases, accumulated amortization	1696	1796
Accumulated amortization-capitalized flight equipment	1696.1	1796.1
Accumulated amortization-capitalized other property and equipment	1696.2	1796.2
Property on operating-type lease to others and property held for lease		1797
Property on operating-type lease to others and property held for lease, accumulated depreciation		1798
Other assets:		
Long-term prepayments		1820
Unamortized developmental and preoperating costs		1830
Other assets and deferred charges		1890
Current liabilities:		
Current maturities of long-term debt		2000
Notes payable:		
Banks		2005
Other		2015
Trade accounts payable		2021
Accounts payable-other		2025
Current obligations under capital leases		2080
Accrued salaries, wages		2110
Accrued vacation liability		2120
Accrued interest		2125
Accrued taxes		2130
Dividends declared		2140
Air traffic liability		2160
Other current liabilities		2190
Noncurrent liabilities:		
Long-term debt		2210
Advances from associated companies		2240
Pension liability		2250
Noncurrent obligations under capital leases		2280
Other noncurrent liabilities		2290
Deferred credits:		
Deferred income taxes		2340
Deferred investment tax credits		2345
Other deferred credits		2390
Stockholders' equity:		
Preferred stock		2620
Common stock		2640
Additional capital invested		2690
Premium on capital stock		2690.1
Discount on capital stock		2690.2
Other capital stock transactions		2690.3
Retained earnings		2900
Treasury stock		2990

[1] Prescribed for group II and group III air carriers only.
[2] At the option of the air carrier, these accounts may be assigned Nos. 2629 and 2729, respectively, for accounting purposes.

Note.—Digits to right of decimals and italicized codes established for CAB control purposes only.

13. Section 5–3 is amended by revising paragraphs (e)(4) and (e)(10) to read:

Sec. 5–3 Property and equipment.

* * * * *

(e) * * *

(4) If property and equipment is acquired as part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the Civil Aeronautics Board, the costs and related allowances for depreciation as carried on the books of the predecessor company at the date of transfer shall be entered by the acquiring air carrier in the appropriate accounts prescribed for recording investments in tangible assets. Any difference between the purchase price of the property and equipment acquired and its depreciated cost at date of acquisition shall be recorded in balance sheet account 1890 Other Assets and Deferred Charges. Property acquired from an associated company shall also be accounted for in accordance with this paragraph unless otherwise approved by the Board.

* * * * *

(10) When operating property or equipment is retired from air transportation or transport-related operations and retained by the air transportation or transport-related operations and retained by the air carrier, its cost, together with applicable allowances for depreciation, shall be transferred to balance sheet classification 1700 Nonoperating Property and Equipment. If property is transferred for exclusive use of nontransport divisions, the cost less related allowances for depreciation shall be recorded in balance sheet account 1510.3 Advances to Associated Companies.

* * * * *

14. Section 5–4 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

Sec. 5–4 Property and equipment depreciation and overhaul.

* * * * *

(g) * * *

(2) When overhauls are performed, the related costs of labor, materials, outside overhauls, and maintenance burden shall be charged to the applicable direct maintenance and maintenance burden objective expense accounts as incurred. With respect to those airframe or aircraft engine types for which overhauls are being deferred and amortized, a project cost ledger shall be maintained to control and identify overhauls costs, and the accumulated overhauls costs shall be debited each month to appropriate subaccounts of the related airframe, aircraft engine, or leasehold improvement accounts with a corresponding credit to account 72.3 Airframe Overhauls Deferred or account 72.8 Aircraft Engine Overhauls Deferred.

(3) Upon completion of each overhaul phase or project, the deferred costs shall be amortized to account 72.3 Airframe Overhauls Deferred or to account 72.8 Aircraft Engine Overhauls Deferred over the authorized interval until the related overhaul procedures are required to be performed again.

* * * * *

15. Section 5–5 is revised to read:

Sec. 5–5 Other assets.

Include in this classification all debit balances in general clearing accounts, including charges held in suspense pending receipt of information necessary for final disposition, prepayments chargeable against operations over a period of years, capitalized expenditures of an organizational or developmental character, unamortized debt expense, property acquisition adjustments, the cost of patents, copyrights and miscellaneous intangibles, and other noncurrent assets which cannot be recorded elsewhere within the chart of accounts. Deferred charges having a definite time incidence shall be amortized over the periods to which they apply.

16. Section 5–9 is amended by revising paragraphs (b) and (g) to read:

Sec. 5–9 Stockholder equity.

* * * * *

(b) The general classification "Stockholders' Equity," shall be subdivided between:

(1) "Total Paid-In Capital" which represents direct contributions of the stockholders;

(2) "Retained Earnings," which represents the amount of income retained from the operation of the air carrier; and

(3) "Treasury Stock," which represents the cost to the air carrier of capital stock issued by the air carrier

that has been reacquired and is held for disposition.

* * * * *

(g) The "Retained Earnings" balance sheet classification shall reflect the balance of net profits, income, and gains of the air carrier from the date of incorporation after deducting losses, distributions to stockholders, and the net unrealized loss on marketable equity securities included in noncurrent assets. In cases where a deficit has been absorbed by a reduction of "Additional Capital Invested" as a result of a restatement of capital stock or retained earnings, a new retained earnings account shall be established, dated to show that it runs from the effective date of the restatement and this dating shall be disclosed in financial statements until such time as the effective date no longer possesses special significance.

Section 6—[Amended]

17. Section 6, *Objective Classification of Balance Sheet Elements*, is amended by:

A. Revising paragraph (b) of Account 1200 to read:

1200 Notes Receivable.

* * * * *

(b) Balances of notes payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

B. Revising paragraph (d) of Account 1270 to read:

1270 Accounts Receivable.

* * * * *

(d) Balances payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

1280 [Removed]

C. Removing the title and account description for Account 1280, *Net Investment in Direct Financing and Sales-Type Leases—Current.*

D. Revising the title and paragraph (b) of Account 1300 *Spare and Supplies* to read:

1300 Spare parts and supplies.

* * * * *

(b) Costs paid by the air carrier such as transportation charges and customs duties; excise, sales, use and other taxes; special insurance; and other charges applicable to the cost of spare parts and supplies shall be charged to this account when they can be definitely allocated to specific items or units of property. If such costs cannot be so allocated, or if of minor significance in relation to the cost of such property, such amounts may be charged to balance sheet account 1890 Other Assets and Deferred Charges and cleared either by a suitable "loading charge" as the parts are used or by current charges to appropriate expense or property accounts; so long as the method of application does not cause material distortion in operating expenses from one accounting period to another.

* * * * *

1311 [Amended]

E. Removing paragraph (d) of Account 1311, *Allowance for Obsolescence—Spare Parts and Supplies.*

F. Redesignating the account number of Account 1520 as 1510.3 to read: 1510.3 *Advances to Associated Companies.*

* * * * *

G. Revising the account description of Account 1530 to read:

1530 Other Investments and Receivables.

(a) Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

(b) For investments in leveraged leases, four subaccounts shall be maintained for: (1) Rentals receivable, net of that portion of the rental applicable to principal and interest on the non-recourse debt; (2) a receivable for the amount of the investment tax credit to be realized on the transaction; (3) the estimated residual value of the leased asset; and (4) unearned and deferred income consisting of the estimated pretax lease income (or loss), after deducting initial direct costs, remaining to be allocated to income over the lease term and the investment tax credit remaining to be allocated to income over the lease term.

(c) For the net investment in direct financing and sales-type leases which is not reasonably expected to be amortized within one year, three subaccounts shall be maintained for: (1) The minimum lease payments receivable (debit); (2) the unguaranteed residual value accruing to the benefit of the lessor (debit); and (3) unearned income (credit).

1570 [Removed]

H. Removing the account number, account title and account description of Account 1570, *Investment in Leveraged Leases.*

1580 [Removed]

I. Removing the account number, account title and account description of Account 1580, *Net Investment in Direct Financing and Sales-Type Leases—Noncurrent.*

J. Revising the account description of Account 1695 to read:

1695 Leased property under capital leases.

(a) Record here the total cost to the air carrier for all property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1695.1 *Capital Leases—Flight Equipment.*

1696.2 *Capital Leases—Other Property and Equipment.*

K. Revising the account description of account 1696 to read:

1696 *Leased Property Under Capital Leases—Accumulated Amortization.*

(a) Record here accruals for amortization of leased property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1696.1 *Accumulated Amortization—Capitalized Flight Equipment.*

1696.2 *Accumulated Amortization—Capitalized Other Property and Equipment.*

1840 [Removed]

L. Removing the account number, account title and account description of Account 1840, *Unamortized Debt Expense.*

1870 [Removed]

M. Removing the account number, account title and account description of Account 1870, *Property Acquisition Adjustment.*

1880 [Removed]

N. Removing the account number, account title and account description of Account 1880, *Intangible Assets.*

O. Revising the account title and account description of Account 1890, *Other Assets*, to read:

1890 Other Assets and Deferred Charges.

(a) Record here other assets and deferred charges not provided for elsewhere.

(b) Record here debits, the proper final disposition of which cannot be determined until additional information has been received. This account shall include the accumulated cost of labor, materials and outside services used in the process of manufacturing flight equipment expendable parts and materials and supplies for stock, the accumulated cost of jobs in process for others, projects to be charged to expense upon completion. This account shall also include unamortized debt expense, property acquisition adjustments and intangible assets.

(c) This account shall be charged with property loss and other costs related to casualties and credited with recoveries from purchased insurance and salvage. A debit or credit balance in this account related to property retired as a result of a casualty shall be recorded in profit and loss account 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other; however, any balances related to property not retired or to other casualties shall be recorded in profit and loss account 58 Injuries, Loss and Damage. Proceeds from purchased insurance for property damage, received prior to repair of such damage, shall not be credited to this account but to balance sheet account 2390 Other Deferred Credits pending repair. The records for each major casualty shall be kept in such manner as to clearly disclose insurance recoveries and the total costs, which shall include charges for the depreciated cost of property damaged or destroyed, costs for clearing wrecks and damaged property and equipment, including salaries and wages for the repair thereof, and payments for damages to property of others. The cost of casualties shall not be charged directly against retained earnings or appropriations thereof, but shall be cleared through the applicable profit and loss accounts in accordance with the foregoing.

(d) Record here the unamortized debt expense related to the assumption by the air carrier of debt of all types and classes. Amounts recorded shall be amortized to profit and loss account 84 Amortization of Debt Discount, Premium and Expense.

(e) Unamortized debt expense shall not include the excess of the par value of debt securities over the cash value of consideration received. Instead, discounts shall be recorded in a subaccount of the related liability.

(f) Record here the cost of patents, copyrights and other intangible properties, rights and privileges acquired as a part of a business from other air carriers and other intangibles not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account.

(g) Record here the difference between the purchase price to the air carrier of property and equipment acquired as a part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the Civil Aeronautics Board, and the depreciated cost to the predecessor company at date of acquisition. Record here also such differences relating to purchases of property and equipment from associated companies unless other treatment is approved by the Board. Separate subaccounts shall be established to record the amounts applicable to each such acquisition.

(h) Balances in this account relating to property acquisition adjustments shall be amortized by charges to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits unless otherwise directed or approved by the Civil Aeronautics Board.

2160 [Amended]

P. Removing paragraph (e) of Account 2160, *Air Traffic Liability*.

2260 [Removed]

Q. Removing the account number, account title and account description of Account 2260, *Stock Purchase Plan Liability*.

R. Revising the account description of Account 2290 to read:

2290 Other Noncurrent Liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2280, inclusive, such as the liability for installments received on capital stock from company personnel who are not bound by legally enforceable subscription contracts, accruals for personnel dismissal liability, and accruals of other demonstrable miscellaneous noncurrent liabilities.

S. Redesignating the account number of Account 2340.1 as 2340 to read:

2340 Deferred Income Taxes.

* * * * *

2340.2 [Removed]

T. Removing the account number, account title and account description of Account 2340.2, *Deferred Taxes Arising from Leveraged Leases*.

U. Removing the undesignated center heading and description of *Commitments and Contingent Liabilities*, which immediately follows Account 2390, *Other Deferred Credits*.

V. Adding a new paragraph (e) to Account 2900 to read:

2900 Retained earnings.

* * * * *

(e) A separate subaccount to this account shall be maintained to record changes in the valuation of marketable equity securities included in noncurrent assets. Such changes shall be reflected in this subaccount to the extent the balance in this subaccount represents a net unrealized loss as of the current balance sheet date.

18. Section 7 is amended by revising accounts 06, 25, 42, 43, 46, 59, 72, and 76; combining accounts 80, 87 and 89; and combining accounts 82, 83 and 84 to read:

PROFIT AND LOSS CLASSIFICATION

Section 7—Chart of Profit and Loss Accounts

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
OPERATING REVENUES AND EXPENSES			
Transport revenues:			
06 Property:			
06.1 Freight	31, 32	31, 32	31, 32
06.2 Excess passenger baggage	31, 32	31, 32	31, 32
25 Maintenance labor:			
25.1 Labor-airframes and other flight equipment		52	52
25.2 Labor-aircraft engines		52	52
25.6 Labor-flight equipment	52		
25.9 Labor-ground property and equipment	52, 53	52, 53	52, 53
42 General services purchased associated companies:			
42.1 Airframe and other flight equipment repairs-associated companies.		52	52
42.2 Aircraft engine repairs-associated companies		52	52
42.6 Flight equipment repairs-associated companies	52		
42.7 Aircraft interchange charges-associated companies.	51, 52	51, 52	51, 52
42.8 General interchange service charges-associated companies.	52, 69	52, 55, 64, 67, 68	52, 55, 61, 62, 63, 65, 66, 68

PROFIT AND LOSS CLASSIFICATION—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
OPERATING REVENUES AND EXPENSES			
42.9 Others service-associated companies	52, 53, 69	52, 53, 55, 64, 67, 68	52, 53, 55, 61, 62, 63, 65, 66, 68
43 General services purchased-outside:			
43.1 Airframe and other flight equipment repairs-outside		52	52
43.2 Aircraft engine repairs-outside	52	52	
43.6 Flight equipment repairs-outside	52		
43.7 Aircraft interchanges-outside	51, 52	51, 52	51, 52
43.8 General interchange service charges-outside	52, 69	52, 55, 64, 67, 68	52, 55, 61, 62, 63, 65, 66, 68
43.9 Other services-outside	52, 53, 69	52, 53, 55, 64, 67, 68	52, 53, 55, 61, 62, 63, 65, 66, 68
* * * * *			
46 Maintenance materials:			
46.1 Airframes and other flight equipment		52	52
46.2 Aircraft engines		52	52
46.6 Flight equipment	52		
46.9 Ground property and equipment	52, 53	52, 53	52, 53
* * * * *			
59 Schedules and timetable	69	67	65, 66
* * * * *			
72 Aircraft overhauls:			
72.1 Airworthiness allowance provisions-airframes	52, 53	52, 53	52, 53
72.3 Airframe overhauls deferred	52, 53	52, 53	52, 53
72.6 Airworthiness allowance provisions-aircraft engines	52, 53	52, 53	52, 53
72.8 Aircraft engine overhauls deferred	52, 53	52, 53	52, 53
73 Provisions for obsolescence and deterioration-expendable parts:	* * *		
76 Amortization expense, capital leases:			
76.1 Amortization-capitalized flight equipment	70	70	70
76.2 Amortization-capitalized other property and equipment	70	70	70
* * * * *			
NONOPERATING INCOME AND EXPENSE			
81 Interest on long-term debt and capital leases:			
81.1 Interest expense, long-term debt	81	81	81
81.2 Interest expense, capital leases	81	81	81
82 Other interest:			
82.1 Interest expense, short-term debt	81	81	81
83.1 Imputed interest capitalized-credit	81	81	81
83.2 Imputed interest deferred-debit	81	81	81
83.3 Imputed interest deferred-credit	81	81	81
83.4 Interest capitalized-credit	81	81	81
84.1 Amortization of discount and expense on debt	81	81	81
84.2 Amortization of premium on debt	81	81	81
85 Foreign exchange gains and losses	81	81	81
89 Other nonoperating income and expense-net:			
80.0 Interest income	81	81	81
86.0 Income from nontransport ventures	81	81	81
87.0 Equity in income of investor controlled companies	81	81	81
88.1 Intercompany transaction adjustment-credit	81	81	81
88.2 Dividend income	81	81	81
* * * * *			

Section 9—[Amended]

19. Section 9, *Functional Classification—Operating Revenues*, is amended by revising functions 3100 and 3200 to read:

3100 Scheduled Services.

This subclassification shall include revenues from the transportation by air of individual passengers or cargo shipments (as opposed to charter flights) pursuant to published schedules, including extra sections and other flights performed as an integral part of published flight schedules.

3200 Nonscheduled Services.

This subclassification shall include revenues from the transportation by air of traffic applicable to the performance of aircraft charters, and other air transportation services not part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the subclassification 3100 Scheduled Services).

Section 10—[Amended]

20. Section 10, *Functional Classification—Operating Expenses of Group I Air Carriers*, is amended by:

A. Revising paragraph c. of subfunction 5300 under function 5400 to read:

5300 *Maintenance Burden.*

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects in accordance with the provisions of section 2-9(b). Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. Revising function 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 2-20, 5-5 and 6-1696, 1830 and 1890.)

7100 [Amended]

C. Removing paragraph (d) of function 7100 *Transport-Related Expenses.*

Section 11—[Amended]

21. Section 11, *Functional Classification—Operating Expenses of*

Group II and Group III Air Carriers, is amended by:

A. Revising paragraph c. of subfunction 5300 under function 5400 to read:

5300 *Maintenance Burden.*

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects in accordance with the provisions of section 2-9(b). Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. Revising function 7000 to read:

7000 Depreciation and amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See section 2-20, 5-5 and sections 6-1696, 1830 and 1890).

7100 [Amended]

C. Removing paragraph (d) of function 7100, *Transport-Related Expenses.*

Section 12—[Amended]

22. Section 12, *Objective Classification—Operating Revenues and Expenses*, is amended by:

A. Revising paragraph (c) of account 06 to read:

06 Property.

* * * * *

(c) This account shall be subdivided as follows by all air carrier groups:

06.1 *Freight.*

Record here revenue from the transportation by air of property other than passenger baggage.

06.2 *Excess Passenger Baggage.*

Record here revenue from the transportation by air of passener baggage in excess of fixed free allowance.

B. Revising paragraph (c) of account 07 to read:

07 Charter.

* * * * *

(c) This account shall be subdivided as follows by all air carrier groups:

07.1 *Passenger.*

Record here revenue from the transportation of passengers and their personal baggage.

07.2 *Property.*

Record here revenue from the transportation of property.

C. Revising account 08 to read:

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Civil Aeronautics Board for the provision of essential air service to small communities.

D. Revising paragraph (b) of account 25 to read:

25 Maintenance labor.

* * * * *

(b) This account shall be subdivided as follows:

Group II and Group III Air Carriers

25.1 *Labor-Airframes and Other Flight Equipment.*

Record here the direct labor expended upon airframes, spare parts related to airframes, and other flight equipment (Other than aircraft engines and spare parts related to aircraft engines). Other flight equipment shall include instruments, which encompass all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines which are maintaned separately from airframes and aircraft engines.

25.2 *Labor-Aircraft Engines.*

Record here the direct labor expended upon aircraft engines and spare parts related to aircraft engines.

Group I Air Carriers

25.6 *Labor-Flight Equipment.*

Record here the direct labor expended upon flight equipment of all types and classes.

All Air Carrier Groups

25.9 *Labor-Ground Property and Equipment*

Record here the direct labor expended upon ground property and equipment of all types and classes. Direct labor expended upon general ground properties shall be charged to subfunction 5200 Direct Maintenance; and direct labor expended upon maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

E. Amending paragraph (c) of account 42 by revising the account title and description of subaccount 42.1 to read as follows and removing subaccount 42.3.

42 General Services Purchased-Associated Companies.

* * * * *

(c) This account shall be subdivided as follows by each air carrier group:

Group II and Group III Air Carriers

42.1 *Airframe and Other Flight Equipment Repairs-Associated Companies.*

Record here charges by associated companies for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges by associated companies for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by associated companies for maintenance of airframes and other flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges-Associated Companies.

* * * * *

F. Amending paragraph (c) of account 43 by revising the account title and account description for subaccount 43.1 to read as follows and by removing subaccount 43.3.

43 General Services Purchased—Outside.

* * * * *

(c) This account shall be subdivided by each air carrier group as follows:

Group II and Group III Air Carriers

43.1 *Airframe and Other Flight Equipment Repairs, Outside.*

Record here charges for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by others for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

* * * * *

G. Amending paragraph (b) of account 46 by revising the account title and account description of subaccount 46.1 to read as follows and by removing subaccount 46.3.

46 Maintenance Materials.

* * * * *

(b) This account shall be subdivided as follows:

46.1 *Materials—Airframes and Other Flight Equipment.*

Record here the cost of materials and supplies consumed directly in maintenance of airframes and spare parts related to airframes. Other flight equipment (including instruments), excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all guages, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines.

* * * * *

H. Revising the account title and account description of account 59 to read:

59 Schedules and Timetables.

Record here the production and distribution cost, excluding compensation of air carrier personnel, of all operating schedules, timetables, circulars and related quick reference charts.

I. Revising paragraph (b) of account 72 to read:

72 Aircraft Overhauls.

* * * * *

(b) This account shall be subdivided as follows by all carrier groups:

72.1 *Airworthiness Allowance Provisions—Airframes.*

Record here current provisions for effecting an equitable distribution of airframe overhaul costs between different accounting periods. Record here also credits for airframe overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.3 *Airframe Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1601.2, Unamortized Airframe Overhauls, and the amount of deferred airframe overhaul costs amortized for the current period.

72.6 *Airworthiness Allowance Provisions-Aircraft Engines.*

Record here current provisions for effecting an equitable distribution of aircraft engine overhauls costs between different accounting periods. Record here also credits for aircraft engine overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.8 *Aircraft Engine Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1602.2, Unamortized Aircraft Engine Overhauls, and the amount of deferred aircraft engine overhaul costs amortized for the current period.

J. Revising account 76 to read:

76 *Amortization Expense-Capital Leases.*

(a) Record here amortization charges applicable to assets recorded under capital leases in Account 1695 — Leased Property under Capital Leases.

(b) This account shall be subdivided as follows by all air carrier groups:

76.1 *Amortization-Capitalized Flight Equipment.*

Record here amortization charges applicable to flight equipment acquired under capital leases.

76.2 *Amortization-Capitalized Other Property and Equipment.*

Record here the amortization charges applicable to property and equipment, other than flight equipment, acquired under capital leases.

Section 14—[Amended]

23. Section 14, *Objective Classification—Nonoperating Income and Expense,* is amended by:

A. Revising the account description of account 80, to read:

80 Interest Income.

Included under account 89 Other Nonoperating Income and Expense-Net.

B. Revising the title and account description of account 82, *Other Interest Expenses,* to read:

82 Other Interest.

(a) This account shall be subdivided as follows by all air carrier groups:

82.1 *Interest Expense—Short-Term Debt.*

Record here interest on all classes of short-term debt.

83.1 *Imputed Interest Capitalized-Credit.*

Record here credits related to imputed interest capitalized pursuant to section 2-10 and recorded in assets accounts.

83.2 *Imputed Interest Deferred-Debit.*

Record here debits related to imputed interest deferred pursuant to section 2-10 in balance sheet account 2390 Other Deferred Credits.

83.3 *Imputed Interest Deferred-Credit.*

Record here periodic credits pursuant to section 2-10 for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 *Interest Capitalized-Credit.*

Record here interest which is capitalized pursuant to section 2-10 and recorded in asset accounts.

84.1 *Amortization of discount and expense on debt.*

Record here for all classes of debt the amortizations of discount and expense on short-term and long-term obligations.

84.2 *Amortization of premium on debt.*

Record here for all classes of debt the amortizations of premium on short-term and long-term obligations.

C. Revising the account description of account 83 to read:

83 Capitalized Interest.

Included under account 82 Other Interest.

D. Revising the account description of account 84 to read:

84 Amortization of Debt Discount, Premium and Expense.

Included under account 82 Other Interest.

E. Revising the title and account description of account 87, *Income from Investor Controlled Companies,* to read:

87 Equity in Income of Investor Controlled Companies.

Included under account 89 Other Nonoperating Income and Expense-Net.

F. Amending paragraph (b) of account 89 by adding new subaccounts 80.0 and 87.0, and revising the account descriptions of subaccounts 86.0 and 89.9 to read:

89 Other Nonoperating Income and Expenses-Net.

* * * * *

(b) This account shall be subdivided as follows by all air carrier groups:

80.0 *Interest Income.*

(a) Record here interest income from all sources. This account shall include as an increase or reduction of interest received the proportionate amortization of any discount or premium on the purchase price of securities of others held by the air carrier.

(b) This account shall not include interest on securities issued or assumed by the air carrier and subsequently reacquired.

86.0 *Income from Nontransport Ventures.*

(a) Record here the gross revenues and expenses applicable to operations not reasonably considered as incidental to the commercial air transport services of the accounting entity; rents from nonoperating properties used by others; income or loss from nontransport divisions; and other income or loss from activities of the air carrier which are extraneous to the air transport and incidental services of the accounting entity.

(b) This account shall include revenues and expenses applicable to nonscheduled transport services performed for the defense establishment when separate reports for such services are required in accordance with section 21 "Introduction to System of Reports." Where the foregoing transport services are not required to be separately reported, gross revenues from such services shall be included in profit and loss account 07 Charter, or other appropriate revenue account, and gross expenses shall be included in the appropriate operating expense functions.

87.0 *Equity in Income of Investor Controlled Companies.*

Record here the equity in the current earnings or losses of investor controlled companies. Dividends declared on the stock of such companies shall not be included in this account as income but shall be entered in balance sheet subaccount 1510.1 Investments in Investor Controlled Companies as a return on investment.

* * * * *

89.9 *Other Miscellaneous Nonoperating Debits.*

Record here all debits of a nonoperating character not provided for otherwise, such as the following:

(a) Fines or penalties imposes by governmental authorities;

(b) Costs associated with employment discrimination that include the following:

(1) Fines or penalties paid by the carrier as a result of a judicial or administrative decree; or the amount paid to the complainant in settling or securing a consent decree;

(2) Back pay awards as a result of a judicial or administrative decree or a compromise settlement regardless of admission of guilt;

(3) Attorneys' fees or court costs awarded to the complainant by a judicial or administrative decree or as a result of a compromise settlement regardless of admission of guilt;

(4) The fees of outside legal counsel or of experts retained in the unsuccessful defense of a discrimination suit or in securing a compromise settlement or consent decree, unless the amounts attributable to the discrimination are not reasonably identifiable; or

(5) Any other expenses, such as employee salaries, resulting from employment practices that were found to be discriminatory or that were the subject of a compromise settlement or consent decree where the amounts attributable to discrimination are reasonably identifiable.

(c) Amortization expense attributable to capital leases recorded in balance sheet Account 1795, Leased Property under Capital Leases;

(d) Costs related to property held for future use;

(e) Donations for charitable, social or community welfare purposes;

(f) Losses on reacquired and retired or resold debt securities of the air carrier;

(g) Losses resulting from troubled debt restructurings;

(h) Losses on uncollectible nonoperating receivables; or

(i) Accruals to allowance for uncollectible nonoperating receivables.

Section 19—[Amended]

24. Section 19, *Uniform Classification of Operating Statistics*, is amended by:

A. Revising section 19-1 to read:

Sec. 19-1 Chart of Operating Statistical Elements.

Air transport traffic and capacity elements	Service classes
AIRPORT-TO-AIRPORT TRAFFIC AND CAPACITY	
501 Interairport distance	Z
110 Revenue passengers enplaned	A, C, E, G, L, N, P, R
111 First class	A, E
112 Coach	C, E
210 Revenue cargo tons enplaned	A, C, E, G, L, N, P, R
213 U.S. mail—priority	A, C, E, G, L, N, P, R
214 U.S. mail—nonpriority	A, C, E, G, L, N, P, R
215 Foreign mail	A, C, E, G, L, N, P, R
217 Freight	A, C, E, G, L, N, P, R
130 Revenue passengers transported	A, C, E, G, L, N, P, R
131 First class	A, E
132 Coach	C, E
150 Nonrevenue passengers transported	A, C, E, G, L, N, P, R
230 Revenue tons transported	A, C, E, G, L, N, P, R
231 Passenger	A, C, E, G, L, N, P, R
233 U.S. mail—priority	A, C, E, G, L, N, P, R
234 U.S. mail—nonpriority	A, C, E, G, L, N, P, R
235 Foreign mail	A, C, E, G, L, N, P, R
236 Express	A, C, E, G, L, N, P, R
237 Freight	A, C, E, G, L, N, P, R
250 Nonrevenue tons transported	A, C, E, G, L, N, P, R
310 Seats available	A, C, E, G, L, N, P, R
311 First class	A, E, G
312 Coach	C, E, G
270 Tons available	A, C, E, G, L, N, P, R
410 Revenue aircraft miles flown	A, C, E, G, L, N, P, R
411 Scheduled	A, C, E, G
412 Extra section	A, C, E, G
430 Revenue aircraft miles scheduled	A, C, E, G
431 Scheduled aircraft miles completed	A, C, E, G
510 Revenue aircraft departures performed	A, C, E, G, L, N, P, R
511 Scheduled service	A, C, E, G
512 Extra section	A, C, E, G
520 Revenue aircraft departures scheduled	A, C, E, G
521 Scheduled aircraft departures completed	A, C, E, G
AIRCRAFT OPERATIONS	
420 Nonrevenue aircraft miles flown	Z
610 Revenue aircraft hours (airborne)	A, C, E, G, L, N, P, R
620 Nonrevenue aircraft hours (airborne)	Z
630 Aircraft hours (ramp-to-ramp)	A, C, E, G, L, N, P, R
MISCELLANEOUS OPERATING ELEMENTS	
810 Aircraft days assigned to service-carrier's equipment	Z
820 Aircraft days assigned to service-carrier's routes	Z
830 Hours on other carriers' interchange equipment (airborne)	Z
921 Aircraft fuels issued (gallons)	Z
922 Aircraft oils issued (gallons)	Z

Sec. 19-2 [Amended]

B. Removing paragraph (g) of section 19-2, *Maintenance of Data.*

C. Revising paragraph (a) of section 19-3 to read:

Sec. 19-3 Accessibility and Transmittal of Data.

(a) Each large certificated air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready availability for examination by representatives of the Board. All Group III carriers shall transmit to the Board on a monthly basis individual flight stage data for scheduled services as prescribed in Section 19-5, summarized by flight number, service segment, service class and aircraft type. Group III air carriers shall utilize either ADP tapes or ADP punched cards for transmitting the prescribed data to the Board unless otherwise specifically permitted by the Board's Office of Comptroller to provide flight stage data on Schedule T-9. All Group I carriers and Group II carriers shall transmit to the Board on a monthly basis individual flight data for scheduled services as prescribed in the reporting instructions for Schedule T-9 in Section 25 of this Part.

* * * * *

D. Amending paragraph (e) of section 19-5 by revising entries Z501 through X250 under "Airport-to-Airport Traffic and Capacity Data" and by revising the entries under "Aircraft Operations" and "Miscellaneous Operating Elements" to read as follows:

Sec. 19-5 Air transport traffic and capacity elements.

* * * * *

(e) The elements, by category and alpha-numeric code, for which data are to be maintained in accordance with the above are as follows:

Airport-to-Airport Traffic and Capacity Data

Z501 *Interairport distance.* The great circle distance, in statute miles, between airports served by each flight stage. Official interairport mileages are available from the Board's Data Services Section, Information Management Division, Office of Comptroller.

X110 *Revenue passengers enplaned.* The number of revenue passengers enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the number of deplaning revenue passengers, i.e., the on-flight origin and destination thereof. Separate data shall be maintained as follows:

X111 First class.
X112 Coach.

X210 *Revenue cargo tons enplaned.* The total of revenue cargo tons enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the tons of deplaning revenue traffic, i.e., the on-flight origin and destination thereof, for each of the following classes:

X213 U.S. mail—priority.
X214 U.S. mail—nonpriority.
X215 Foreign mail.
X217 Freight.

X130 *Revenue passengers transported.* The number of revenue passengers transported. Separate data shall be maintained as follows:

X131 First class.
X132 Coach.

X150 *Nonrevenue passengers transported.* The number of nonrevenue passengers transported.

X230 *Revenue tons transported.* The number of tons of revenue traffic transported. Separate data shall be maintained for each of the following classes of traffic:

X231 Passenger.
X233 U.S. mail-priority.
X234 U.S. mail-nonpriority.
X235 Foreign mail.
X237 Freight.

X250 *Nonrevenue tons transported.* The number of nonrevenue tons of traffic transported.

* * * * *

Aircraft Operations

Z420 *Nonrevenue aircraft miles flown.* The nonrevenue aircraft miles flown based upon the airport-to-airport distance of each flight stage. In circumstances where an interairport movement is not involved, the mileage may be computed by converting nonrevenue aircraft hours at the appropriate speed for the particular flight.

X610 *Revenue aircraft hours (airborne).* The revenue aircraft hours flown based upon the airborne time of each aircraft movement.

Z620 *Nonrevenue aircraft hours (airborne).* The aircraft hours flown in nonrevenue service based upon the "airborne" time of each aircraft movement.

Z630 *Aircraft hours (ramp-to-ramp).* The aircraft hours flown in both revenue and nonrevenue services, based upon the "ramp-to-ramp" time of each aircraft movement.

Miscellaneous Operating Elements

Z810 *Aircraft days assigned to service-carrier's equipment.* The number of aircraft days that owned or rented aircraft are in the possession of the air carrier and assigned to services of the reporting air carrier or assigned to services of other carriers under aircraft interchange agreements. Aircraft days shall be allocated between operating entities as follows:

(1) Aircraft assigned exclusively to a particular operation shall be recorded for the operation to which assigned.

(2) Aircraft used interchangeably in two or more operating entities shall be prorated between entities on the basis of the ramp-to-ramp time the individual aircraft was in operation in each entity.

(3) The time of aircraft in maintenance or overhaul, or in reserve status, shall be assigned between operating entities on the basis of the relative ramp-to-ramp time all aircraft of the same type were in operation in each entity.

Z820 *Aircraft days assigned to service-carrier's routes.* The number of aircraft days that owned or rented aircraft and aircraft of others under interchange agreements are assigned to services perfomed by the air carrier.

Z830 *Hours on other carriers' interchange equipment (airborne).* The airborne hours flown with aircraft of others in both revenue and nonrevenue services of the air carrier under aircraft interchange agreements.

Z921 *Aircraft fuels issued (gallons).* The gallons of aircraft fuels issued during the current accounting period for both revenue and nonrevenue flights.

Z922 *Aircraft oils issued (gallons).* The gallons of aircraft engine oils issued during the current accounting period for both revenue and nonrevenue flights.

25. Section 21 is amended by revising paragraphs (k) and (l) to read:

Sec. 21 Introduction to Systems of Reports.

* * * * *

(k) Generally, route air carriers' nonscheduled services shall be treated as an integral part of the reporting entity to which most closely related without regard to the geographic area in which such nonscheduled services may actually be performed. However, supplemental reports shall be made of nonscheduled services (including service for the Department of Defense) in areas not encompassed by the prescribed reporting entity in any month in which the available ton-miles of such nonscheduled services exceed 5 percent of the available ton-miles of the reporting entity. Such supplemental reports shall continue until waived by the Board upon a showing that such nonscheduled operations will not in the subsequent 12-month period exceed the 5-percent limit. The supplemental reports to be filed each month or calendar quarter, as applicable, shall be comprised of report Schedules P–5, T–1, and T–2. Transport and nontransport revenues pertaining to such separately reported nonscheduled services shall be reported on Schedule P–2 each quarter.

(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Board, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P–1 through P–8, T–1, and T–2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

26. Section 22 is amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a), by revising of paragraph (b)(1) and by removing and reserving paragraphs (d) and (k) to read:

Sec. 22 General Reporting Instructions.

(a) * * *

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B-1	Balance Sheet	Q	(1)	X	X
B-1.1	Balance Sheet	S-A	(2)		
B-7	Airframes and Aircraft Engines Acquired	Q		X	X
B-8	Flight Equipment Retired	Q		X	X
B-12	Statement of Changes in Financial Position	Q	(1)	X	X
B-43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P-1.1	Statement of Operations	S-A	(2)		
P-1.2	Statement of Operations	Q	(1)	X	X
P-1(a)	Interim Operations Report	M	X	X	X
P-2	Notes to CAB Form 41 Report	Q	(1)	X	X
P-5.1	Aircraft Operating Expenses	Q(1)/S-A(2)	X		

LIST OF SCHEDULES IN CAB FORM 41 REPORT—Continued

Schedule No	Title	Filing frequency	Applicability by carrier group		
			I	II	III
P-5.2	Aircraft Operating Expenses	Q		X	X
P-6	Maintenance, Passenger Service and General Administrative Expense Functions	Q	(1)	X	X
P-7	Aircraft and Traffic Servicing, and Promotion and Sales Expense Functions—Group II and Group III Air Carriers	Q		X	X
P-8	Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers	Q			X
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Entity	M	(1)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	X	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services	M		X	X
T-2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft	Q	X	X	X
T-3(a)	Airport Activity Statistics-Scheduled Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics-Scheduled Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T-8	Report of All-Cargo Operations	A[2]	(3)	(3)	(3)
T-9	Nonstop Market Report	M	X	X	
G-41	Persons Holding More than 5 Per Centum of Respondent's Capital Stock or Capital	A	(1)	X	X

M—Monthly. Q—Quarterly. S-A—Semiannually. A—Annually. X-All Carriers.
[1] Applicable to Group I air carriers with annual operating revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual operating revenues below $10 million.
[3] Applicable to carriers conducting Section 418 all-cargo operations.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due Dates[1]	Schedule No.
January 20	P-12(a).
January 30	P-1(a), T-1, T- 2,T-3, T-9.
February 10[2]	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8, P-10.
February 20	P-12(a).
March 1	P-1(a),T-1,T-9
March 20	P-12(a).
March 30	B-43, P-1(a), G-41, T-1, T-8, T-9.
April 20	P-12(a).
April 30	P-1(a), T-1, T-2, T-3, T-9.
May 10	A, B-1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
May 20	P-12(a).
May 30	P-1(a), T-1, T-9.
June 20	P-12(a).
June 30	P-1(a), T-1, T-9
July 20	P-12(a).
July 30	P-1(a), T-1, T-2, T-9.
August 10	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
August 20	P-12(a).
August 30	P-1(a), T-1, T-9
September 20	P-12(a).
September 30	P-1(a), T-1, T-9.
October 20	P-12(a).
October 30	P-1(a), T-1, T-2, T-3, T-9.
November 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
November 20	P-12(a).
November 30	P-1(a), T-1, T-9.
December 20	P-12(a).
December 30	P-1(a), T-1, T-9.

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] B and P reporting due dates are extended to March 30 if preliminary schedules are filed at the Board by February 10.

(b) * * *

(1) The time for filing B and P report schedules for the final quarter or semiannual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B-1 or B-1.1 and P-1.1 or P-1.2 are submitted, as applicable, and are received on or before their respective due dates.

* * * * * *

(d) [Reserved.]

* * * * * *

(k) [Reserved]

Section 23—[Amended]

27. Section 23, *Certification and Balance Sheet Elements*, is amended by:

A. Revising the reporting instructions of Schedule B-1 to read:

* * * * * *

Schedule B-1—Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall reflect the balances at the close of business on the last day of each calendar quarter for the overall or system operations of each air carrier in conformance with the provisions of sections 4, 5 and 6.

(c) Individual proprietors or partners shall report the aggregate capital contributed by the proprietor or partners in account 2890 Additional Capital Invested.

* * * * *

B. Revising paragraph (a) of the reporting instructions for Schedule B-1.1 to read:

Schedule B-1.1—Balance Sheet

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million.

* * * * *

C. Removing the title and reporting instructions for Schedule B-3, *Statement of Changes in Stockholder's Equity.*

D. Removing the title and reporting instructions for Schedule B-5, *Property and Equipment.*

E. Revising the reporting instructions for Schedule B-7 to read:

Schedule B-7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported in aggregate for each type or model; however, aircraft engines obtained under capitalized leases shall be separately reported under a caption entitled: Capital Leases—Aircraft Engines. Airframe units leased from others for a period of more than 90 days shall be reported in a separate subsection of this schedule, captioned as follows: Capital Lease—Airframe Units; and Operating Leases—Airframe Units. In addition, a notation shall be made by license number of airframe units of the air carrier returned after lease to others for a period of more than 90 days. Airframe units obtained through interchange lease arrangements shall not be so reported.

(c) All dates shall indicate the day, the month and the year; shall be provided on a unit basis for airframes only; and, shall be reported for each aircraft engine group by date of transaction.

(d) Report shall be made in the quarter in which each airframe and each group of aircraft engines is actually acquired irrespective of whether the cost thereof is reflected in the property and equipment accounts during the current quarter or a subsequent quarter. If the cost data are not reflected in the current quarter a footnote to that effect shall accompany the report of acquisition. The cost shall be reported during the quarter in which determined and the equipment to which related shall be listed again in this schedule, with complete information, and shall be identified as being the same equipment reported at the earlier date.

(e) Column 2, "Date Placed in Transport Service" shall relate to airframes only and shall be the date on which each airframe was or will be placed in regular service by the reporting entity. If this date is not known at the time of submission of the

report, an estimated date bearing the notation "estimate" shall be provided with the exact date shown by footnote on a subsequent Schedule B–7 in which the airframe is reidentified by license number, type of aircraft and date acquired.

(f) Column 8, "Maximum Seat Capacity" shall reflect the number of passenger seats installed in each airframe acquired. When the configuration of airframes provides sleeping accommodations, the passenger capacity shall be shown in terms of a sleeper version and non-sleeper version. When airframes are designed for multiple adjustable seating configurations, the maximum number of seats for which designed shall be reported. When the seating configuration of airframes is modified subsequent to original acquisition, the revised passenger capacity of each airframe shall be reported in the quarter in which modified and referenced to identify original capacity reported.

(g) Column 9, "Cost" shall reflect the book cost of airframes and aircraft engines acquired and the cost of improvements, betterments or other additions made to the acquired equipment.

B–7(b)—[Removed]

F. Removing the title and reporting instructions of Schedule B–7(b), *Flight Equipment Acquired.*

G. Revising the title and reporting instructions of Schedule B–8, *Property and Equipment Retired* to read:

Schedule B–8—Flight Equipment Retired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for the sale or retirement of each airframe, each type of aircraft engine (stating the number of units retired) and, to the extent retired along with airframes and engines, in aggregates by accounts, for operating property and equipment included in Accounts 1603 through 1608 and nonoperating property and equipment included in Accounts 1703 through 1708. Disposition of properties in Accounts 1608 and 1708 not related to airframe and aircraft engine retirements shall be reported in a separate group for each account. Airframe units leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule and captioned as follows: Capital Leases-Airframe Units; and Operating Capital Leases-Airframe Units. In addition a notation shall be made by license number and name of lessee of airframe units leased to others for a period of more than 90 days; moreover, airframe units leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Airframe units leased under interchange arrangements shall not be so reported. Aircraft engines obtained under capital leases shall be separately reported under a caption entitled: Capital Leases-Aircraft Engines. Additionally, aircraft engines leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule.

(c) Retirements shall be listed in the numerical sequence of the property and equipment account to which related.

(d) All dates shall include the day, the month and the year of each transaction.

(e) Column 7, "Cost" shall reflect the book cost of the retired property.

(f) Column 9, "Realization" shall reflect the proceeds from disposition, including any insurance proceeds.

(g) Column 10, "Disposition," shall reflect the name of the person or organization to which airframes and aircraft engines are sold or a notation as to the nature of the retirement and the account to which any depreciated cost has been charged, if not sold. Items included in accounts 1607, 1608, 1707, and 1708, sold as a part of airframe or aircraft engine sales transactions, shall also be identified by the name of the buyer. Other sales of items included in these accounts shall be reported in a separate group in aggregate for each property account affected.

B–10 [Removed]

H. Removing the title and reporting instructions of Schedule B–10, *Unamortized Developmental and Preoperating Costs.*

I. Revising the reporting instructions for Schedule B–12 to read:

Schedule B–12—Statement of Changes in Financial Position

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) In determining working capital generated by operations, net income as reported on Schedule P–1.1, or Schedule P–1.2 shall be increased by expenses not requiring working capital in the current period and shall be decreased by income not generating working capital in the current period such as gains on property retirements and undistributed earnings of investor controlled companies. Those items which do not generate working capital in the current period shall be included net on line 6 "Other." If the amount reported on line 6, line 12, or line 18 exceeds 5 percent of the total sources or applications, a footnote shall be added to this schedule disclosing the components amounts.

(d) Generally, all items shall be reported in gross amounts. Items not resulting in net working capital changes such as exchanges of bonds or capital stock for fixed assets shall be reported as a source of working capital from the incurrence of debt or issuance of stock and a concurrent application of working capital for the asset acquisition. Likewise, the conversion of debt for capital stock shall be reported as a source of working capital for capital stock issued and an application of working capital for the debt retired.

B–13 [Removed]

J. Removing the title and reporting instructions of Schedule B–13, *Summary of Projected Financial Commitments and Related Deposits.*

B–41 [Removed]

K. Removing the title and reporting instructions of Schedule B–41, *Receivables, Payables and Investments Relating to Affiliates and Other Investment Data.*

L. Revising the reporting instructions for Schedule B–43 to read:

Schedule B–43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group I, Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Type and model refers to aircraft models such as B–707–100, B–707–200, DC–10–40, Beech-18, Piper PA–32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. Airframes that are authorized for operation over water under FAA regulation FAR 121 shall be so indicated by asterisk.

(c) Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(d) Data in this schedule shall be grouped and subtotaled as data

pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be reported, by type of lease, in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating equipment.

(e) Data pertaining to airframes and aircraft engines obtained under operating leases shall be listed in columns 1 through 7; the cost of improvements to equipment under operating leases shall be reported in columns 8 through 12.

(f) Column 7 "Available Capacity (Weight)" shall reflect, for each reported aircraft type, the available capacity (stated in pounds) that is used in computing the available ton-miles reported on Schedules T-1 and T-2.

(g) Column 8 "Acquired Cost or Capitalized Value" shall include (1) the acquisition cost of owned airframes and aircraft engines; (2) the total capitalized cost of obtaining airframes and engines under capital leases; and (3) the cost of improvements to airframes and engines obtained under operating leases.

(h) Column 9 "Allowance for Depreciation or Amortization" shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(i) Column 10 "Depreciated Cost or Amortized Value" shall be calculated as either (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) or (2) Capitalized Value (column 6) less Amortization (column 7).

(j) Column 11 "Estimated Residual Value" shall state in dollars the residual value assigned to owned and capital-leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(k) Column 12 "Estimated Depreciable or Amortizable Life (Months)" shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

B-43.1 [Removed]

M. Removing the title and reporting instructions of Schedule B-43.1, Aircraft Inventory Data.

B-46 [Removed]

N. Removing the title and reporting instructions of Schedule B-46, *Long-Term and Short-Term Nontrade Debt.*

Section 24—[Amended]

28. Section 24, *Profit and Loss Elements*, is amended by:

A. Revising paragraph (a) of the reporting instructions of Schedule P-1.1 to read:

Schedule P-1.1—Statement of Operations

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million. Data reported on this schedule shall be for the overall or system operations of the air carrier.

* * * * *

B. Revising paragraphs (a) and (d) to read as follows and by removing and reserving paragraph (e) of the reporting instructions of Schedule P-1.2.

Schedule P-1.2—Statement of Operations

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

(d) Data reported in the "12 Months-to-Date" column shall represent for each item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters.

(e) [Reserved]

* * * * *

C. Revising paragraphs (a) and (i) to read as follows and by removing and reserving paragraphs (h) and (q) of Schedule P-2.

* * * * *

Schedule P-2—Notes to CAB Form 41 Report

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

(h) [Reserved]

(i) Route air carriers shall note on this schedule all dividends declared in the current period on stocks of investor controlled companies.

* * * * *

(q) [Reserved]

P-3 [Removed]

D. Removing the title and reporting instructions of Schedule P-3, *Transport Revenues; Depreciation and Amortization; Nonoperating Income and Expense (Net).*

P-3(a) [Removed]

E. Removing the title and reporting instructions of Schedule P-3(a), *Income Taxes.*

P-4 [Removed]

F. Removing the title and reporting instructions of Schedule P-4, *Transport-Related Revenues and Expenses; Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes in Prior Years; Explanation of Prior Period Adjustments and Dividends Declared.*

G. Revising Schedule P-5.1 to read:

Schedule P-5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $10 million or more shall file this schedule quarterly. Group I air carriers that have annual operating revenues below $10 million shall file this schedule semiannually.

(b) Subject to the provisions of Section 22(a), quarterly reports are due on May 10, August 10, November 10 and February 10 for the first, second, third and fourth calendar quarters, respectively. Semiannual reports are due on August 10 and February 10.

(c) Each carrier shall indicate in the space provided its full corporate name and an "X" shall be inserted in the appropriate box to indicate whether the data being reported are quarterly or six months data. The period-ending data shall be indicated in the space provided.

(d) Route and charter air carriers subject to the quarterly filing requirement shall file this schedule for each operating entity of the air carrier. Air carriers subject to the semiannual filing requirement shall file this schedule for the overall or system operations of the air carrier.

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate colums of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-200, DC-10-40, Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. In the space

provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type.

(f) Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:

(i) Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

(2) Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

(3) Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(g) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 "Departure Related (Station) Expense" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers, and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectable accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(h) Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.

(i) Line 16 "Total Operating Expense" shall equal the sum of lines 9 and 15.

H. Revising reporting instructions for Schedule P-5.2 to read:

Schedule P-5.2—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule. "Aircraft Type" refers to aircraft models (such as B-707-100, B-707-300, DC-9-30, etc.) that are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by that air carrier. Aircraft types not generally used in revenue service shall be separately reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(d) Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided. Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(e) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P-6. The amount reported for this item, in aggregate for all aircraft types, shall agree with the amount reported for the same item reflected on Schedule P-6.

(g) Item 73 "Obsolescence and Deterioration—Expendable Parts" shall reflect (for obsolescence and deterioration of flight equipment expandable parts) the gross provisions for losses in value of expendable parts during the current accounting period offset by any credits applicable to the current period for adjustments for excess inventory levels determined pursuant to section 6-1311.

(h) The total of function 5100 "Flying Operations" reported on this schedule shall agree with corresponding amounts reported on Schedule P-1.2 and the total of item 5278 "Total Direct Maintenance—Flight Equipment" shall agree with the corresponding amount reported in Schedule P-6.

P-5.1(a) [Removed]

I. Removing the title and reporting instructions of Schedule P-5.1(a), *Statement of Aircraft Operating Expenses.*

P-5(a) [Removed]

J. Removing the title and reporting instructions of Schedule P-5(a).

Components of Flight Equipment Depreciation.

K. Revising paragraphs (a) and (e) to read as follows and by removing and reserving paragraphs (c) and (d) of Schedule P-6:

Schedule P-6—Maintenance, Passenger Service and General Services and Administration Subfunctions

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

(c) [Reserved]

(d) [Reserved]

(e) Group I air carriers shall report the indicated data for all except function 5500 Passenger Service.

* * * * *

L. Revising the reporting instructions of Schedule P-7 to read:

Schedule P-7—Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Group II air carriers and Group III charter carriers shall report the indicated data for all except subfunction 6100 Aircraft Servicing.

(d) Group III air carriers shall report the indicated data for subfunction 6100 Aircraft Servicing and function 6800 General and Administrative and shall disregard the data indicated for functions 6400 Aircraft and Traffic Servicing and 6700 Promotion and Sales.

M. Revising the reporting instructions of Schedule P-8 to read:

Schedule P-8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

(a) This schedule shall be filed by each Group III air carrier only.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) The sum of the totals reported in this schedule for subfunctions 6200 Traffic Servicing and 6300 Servicing Administration, together with 6100 Aircraft Servicing in Schedule P-7 shall agree with the corresponding amount reported for function 6400 Aircraft and Traffic Serving in Schedule P-1.2. The sum of the totals reported in subfunctions 6500 Reservations and Sales and 6600 Advertising and Publicity shall agree with the corresponding amount reported for function 6700 Promotion and Sales in Schedule P-1.2.

P-9.10 [Removed]

N. Removing the title of Schedule P-9.1, *Distribution of Ground Servicing Expenses by Geographic Location—Group I Air Carriers.*

O. Revising paragraphs (a) and (d) and adding a new paragraph (e) to the reporting instructions of Schedule P-10 to read:

Schedule P-10—Employment Statistics by Labor Category

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

(d) Labor category description—"Other personnel" shall include all employees whose salary is chargeable to accounts 30, 32, 34 and 35 in this Uniform System of Accounts and Reports.

(e) Labor category description—"Transport-related" shall include all employees whose salary is not chargeable to one of the various salary accounts contained in the Uniform System of Accounts and Reports. For example, this category would include those employees who work in transport-related operations and other activities for which a separate payroll account is not prescribed. The number of employees reported as transport-related shall be calculated in accordance with paragraph (c) of these reporting instructions.

P. Revising paragraph (a) of the reporting instructions of Schedule P-12(a) to read:

Schedule P-12(a)—Fuel Consumption by Type of Service and Entity

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

Section 25—[Amended]

29. Section 25, *Traffic and Capacity Elements*, is amended by:

A. Revising paragraph (b) of the general instructions to Section 25 to read:

* * * * *

(b) Schedules T-1, T-2, and T-3 shall be in a form prescribed by the Board or in the form of approved machine listings. The same information reported in Schedule T-1 shall also be submitted on magnetic tape or punched cards at the time the hardcopy schedules are submitted; however, those air carriers not having access to automatic data processing equipment shall submit only hardcopy reports to the Board.

* * * * *

B. Revising paragraph (d) of the reporting instructions for Schedules T-1(a), T-1(b) and T-1(c) to read:

Schedule T-1(a)—Traffic and Capacity Statistics by Class of Service

Schedule T-1(b)—Traffic and Capacity Statistics by Class of Service-Scheduled Services

Schedule T-1(c)—Traffic and Capacity Statistics by Class of Service-Nonscheduled Services

* * * * *

(d) A description of each item shall be given in the left margin, and separate columns shall be used to present the codes and data as applicable for each classification of service prescribed in section 19-4, namely, Scheduled Cargo Service, Nonscheduled Civilian Passenger-Cargo Service, Nonscheduled Military Passenger-Cargo Service, Nonscheduled Civilian Cargo Service, Nonscheduled Military Cargo Service and All Services. In addition, columns are provided for total scheduled and total nonscheduled services. Nonscheduled Military Passenger-Cargo Service and Nonscheduled Military Cargo Service shall be reported by aircraft type. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-200, DC-10-40, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. The schedule shall include the following items:

Code	Elements
X110	Revenue passenger enplaned.
X140	Revenue passenger-miles.
X141	First class.
X142	Coach.
X160	Nonrevenue passenger-miles.
X240	Revenue ton-miles.
X241	Passenger.
X243	U.S. mail-priority.
X244	U.S. mail-nonpriority.
X245	Foreign mail.
X247	Freight.
X260	Nonrevenue ton-miles.
X280	Available ton-miles.

Code	Elements
X320	Available seat-miles.
X321	First class.
X322	Coach.
X410	Revenue aircraft miles flown.
X430	Revenue aircraft miles scheduled.
X431	Scheduled aircraft miles completed.
X510	Revenue aircraft departures performed.
X610	Revenue aircraft hours (airborne).
X620	Nonrevenue aircraft hours (airborne).
XXXX	Revenue aircraft hours (ramp-to-ramp).

C. Revising the title and paragraphs (a) and (d) of the reporting instructions of Schedules T-2(a) and T-2(b) to read:

Schedule T-2—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) This schedule shall be filed quarterly by all carrier groups.

* * * * *

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

SCHEDULED SERVICES

Code	Elements
	Revenue Passenger-Miles (000).
A140,E141	First Class and Mixed First Class Passenger-Cargo.
C140,E142	Coach and Mixed Coach Passenger-Cargo.
G140	Cargo.
K140	Total.
	Available Seat-Miles (000).
A320,E321	First Class and Mixed First Class Passenger-Cargo.
C320,E322	Coach and Mixed Coach Passenger-Cargo.
G320	Cargo.
K320	Total.
K240	Revenue Ton-Miles.
K280	Available Ton-Miles.
	Revenue Aircraft Miles Flown.
A,C,E410	Passenger-Cargo.
G410	Cargo.
K410	Total.
	All Services
Z140	Revenue Passenger-Miles (000).
Z320	Available Seat-Miles (000).
Z240	Revenue Ton-Miles.
Z280	Available Ton-Miles.
Z410	Revenue Aircraft Miles Flown.
	Aircraft Hours Flown
Z610	Revenue Aircraft Hours (airborne).
Z620	Nonrevenue Aircraft Hours (airborne).
Z650	Total Aircraft Hours (airborne).

SCHEDULED SERVICES—Continued

Code	Elements
	Miscellaneous Operating Factors
Z810	Aircraft Days Assigned to Service-Carrier's Equipment.
Z820	Aircraft Days Assigned to Service-Carrier's Routes.
Z420	Nonrevenue Aircraft Miles Flown.
Z830	Carrier's Interchange Equipment-Hours on Others (airborne).
Z630	Aircraft Hours (ramp-to-ramp).
Z921	Aircraft Fuels Issued (gallons).
Z922	Aircraft Oils Issued (gallons).

D. Revising the titles of Schedules T-3(a) and T-3(b), adding a new paragraph (e) to and revising paragraph (d) of the reporting instructions of Schedules T-3(a), T-3(b) and T-3(c) to read:

Schedule T-3(a)—Airport Activity Statistics-Scheduled Revenue Service

Schedule T-3(b)—Airport Activity Statistics-Scheduled Revenue Service

Schedule T-3(c)—Airport Activity Statistics-Nonscheduled Revenue Service

* * * * *

(d) Data shall be reported and listed in alphabetical sequence for each airport at which a carrier has conducted either scheduled service or charter operations during the report period. However, data applicable to international airports that are served only on a charter basis may be grouped and reported in total following the listing of individual airports. The schedule shall include the following items:

Item	Scheduled service	Nonscheduled service
Airport code		
Revenue aircraft departures scheduled	K520	
Scheduled revenue departures completed	K521	
Revenue aircraft departures performed total by aircraft type	K510	V510
Revenue passengers enplaned	K110	V110
Revenue cargo tons enplaned:		
U.S. mail-priority	K213	V213
U.S. mail-nonpriority	K214	V214
Foreign mail	K215	V215
Freight	K217	V217

(e) Where data are required to be reported by aircraft type, separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. For each reported aircraft type, carriers shall also insert at the head of each column the four digit "Aircraft Code" which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type.

E. Revising paragraph (a) of the reporting instructions of Schedule T-9 to read:

Schedule T-9—Nonstop Market Report

(a) This schedule shall be filed monthly by all Group I and Group II air carriers providing scheduled service and may be used, with the approval of the Board's Comptroller, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of Section 19-3.

* * * * *

Section 26—[Amended]

30. Section 26, *General Corporate Elements,* is amended by revising paragraph (a) of the reporting instructions of Schedule G-41 to read:

Schedule G-41—Persons Holding More than 5 Per Centum of Respondents Capital Stock or Capital

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

* * * * *

(Secs. 204, 401, 407, 416, 417, 901, 902, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 771, 783, 784, 788, 76 Stat. 145; 49 U.S.C. 1324, 1371, 1377, 1386, 1387, 1471, 1472, and 1482)

CAB Form 41 Report is amended accordingly and is available at the address given under **FOR FURTHER INFORMATION CONTACT.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-25 Filed 1-2-85; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 84W-0364]

Antibiotic Drugs; Ceftizoxime Sodium Injection

Correction

In FR Doc. 84-32957 beginning on page 49285 in the issue of Wednesday, December 19, 1984, make the following correction: On page 49286, in the first column, in § 442.217b, in the seventh line

of paragraph (a)(1), "isoomostic" should read "isoosmotic".

BILLING CODE 1505-01-M

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Hygromycin B, Tylosin, and Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Micro Blenders, Inc., that provide for the use of: (1) A premix containing 10 grams of tylosin per pound for making complete swine, beef cattle, and chicken feeds; (2) a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds; and (3) a premix containing 0.6 gram per pound hygromycin B for making complete swine and chicken feeds. FDA is also amending the regulations to remove Micro Blenders, Inc., from the list of sponsors of approved NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADA's.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 123-065 for a 10-gram-per-pound tylosin (as tylosin phosphate) premix; NADA 128-617 for a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine; and NADA 128-618 for a premix containing 0.6 gram per pound hygromycin B. This document removes those portions of the regulations that reflect approval of these NADA's. Additionally, the regulations are amended to remove Micro Blenders, Inc., from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

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

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) 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 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. Part 510 is amended in § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) by removing the entry for "Micro Blenders, Inc.," and in paragraph (c)(2) by removing the entry for "050782".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. Part 558 is amended:

§ 558.274 [Amended]

a. In § 558.274 *Hygromycin B* in paragraph (a)(4) by removing ", and 050782" and inserting "and" between the numbers "050568," and "050639" and in paragraph (e)(1) (i) and (ii) by removing ", 050782".

§ 558.625 [Amended]

b. In § 558.625 *Tylosin* by removing paragraph (b)(74) and marking it "[Reserved]".

§ 558.630 [Amended]

c. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(9) by removing ", and 050782" and inserting "and" between the numbers "050568," and "050639".

Effective date. January 14, 1985.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: December 26, 1984.

[FR Doc. 85-14 Filed 1-2-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing a portion of the animal drug regulations which reflects approval of a new animal drug application (NADA) for Bayvet's sulfadimethoxine injection. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of this NADA.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 32-336 for Suldixine™ (sulfadimethoxine) Injection 10% held by Bayvet Division of Miles Laboratories, Inc. The NADA, originally approved July 21, 1967, provides for the treatment of susceptible bacterial infections in dogs. This document removes that portion of the regulation reflecting approval of this NADA. In a final rule published in a previous issue of the **Federal Register** (September 20 1984; 49 FR 36829), paragraph (b) of § 522.2220 had been amended to reflect that Bayvet's NADA was the sole approval reflected by this paragraph.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

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

§ 522.2220 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) 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 5.84), Part 522 is amended in § 522.2220 *Sulfadimethoxine injection* in paragraph (b) by removing the test and marking it "[Reserved]".

Effective date. January 14, 1985.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: December 26, 1984.

Lester M. Crawford,

Director Center for Veterinary Medicine.

[FR Doc. 85-13 Filed 1-2-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-193; Reference Notice No. 477]

Martha's Vineyard Viticultural Area

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

ACTION: Final rule.

SUMMARY: This rule establishes a viticultural area located in Massachusetts known as "Martha's Vineyard." This final rule is the result of a petition submitted by Mr. George Mathiesen, of Chicama Vineyards, West Tisbury, Massachusetts.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Martha's Vineyard as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing areas and will help consumers identify the wines they purchase.

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR Part 9.

Petition for Martha's Vineyard. Mr. George Mathiesen, co-owner of Chicama Vineyards, West Tisbury, Massachusetts, submitted a petition for the establishment of a viticultural area known as "Martha's Vineyard." This viticultural area consists of the island of Martha's Vineyard (including Chappaquiddic Island) in Dukes County, Massachusetts.

In response to this petition, ATF proposed the Martha's Vineyard viticultural area in Notice No. 477 on August 4, 1983 (48 FR 35462). In that notice, ATF solicited comments concerning the proposed viticultural area. Notice No. 477 also proposed a "Southeastern New England" viticultural area which was adopted by T.D. ATF-169, March 28, 1984 (49 FR 11829).

Comments. Nine respondents submitted comments on the proposed Martha's Vineyard viticultural area. The Martha's Vineyard Airport Commission supported the proposed viticultural area.

The other eight respondents objected to the proposed Martha's Vineyard viticultural area on the basis of its name. These respondents included Thomas May, owner of a Napa Valley, California vineyard named "Martha's Vineyard," the Heitz Wine Cellars, St. Helena California, five other Napa Valley wineries, and Bob Thompson of St. Helena, a wine consumer.

On the basis of the evidence contained in the original petition, ATF is adopting the "Martha's Vineyard" viticultural area as proposed in Notice No. 477. The evidence presented in the petition, and the discussion of the name is outlined below.

Name

Petition. The name "Martha's Vineyard" was well documented in the petition as referring to the viticultural area. This name was given to the island in 1602 by Bartholemew Gosnold, an agent for Sir Walter Raleigh. In succeeding years, the island was referred to as Martha's or Martin's Vineyard. By 1640 after the first permanent settlement on the island, the name was firmly established as Martha's Vineyard. Today, Martha's Vineyard is a well known resort area, and all references to the island are to Martha's Vineyard.

Written comments. The name "Martha's Vineyard" proved to be controversial. According to his written comment, Thomas May purchased a vineyard in Napa Valley in 1963 and named it "Martha's Vineyard" in honor of his wife. This vineyard is now 40 acres in size and produces Cabernet Sauvignon grapes which are sold to Heitz Wine Cellars, St. Helena, California. Heitz produces and bottles Cabernet Sauvignon wine from these grapes and labels it "Napa Valley" with the additional vineyard designation "Martha's Vineyard."

According to the written comments, this wine is of exceptional quality and is generally known as, and referred to as Heitz "Martha's Vineyard" Cabernet Sauvignon. Heitz stated their "Martha's Vineyard" label is well known nationally and internationally.

Mr. Thomas May, vineyard owner, and Heitz Wine Cellars argued against the establishment of a Martha's Vineyard viticultural area in Massachusetts for the following reasons:

1. It would violate Heitz common law right as an owner of the trademark and trade name "Martha's Vineyard."

2. Establishment of the viticultural area would deprive Heitz, as a trade name owner, to use its established trade name "Martha's Vineyard."

3. Establishment of the viticultural area would unfairly deprive Heitz of the goodwill and reputation built on the name "Martha's Vineyard," and this would result in serious economic detriment.

4. Establishment of the viticultural area would be deceptive and misleading to consumers who are familiar with "Martha's Vineyard" wine produced by Heitz.

As a result of these arguments, Heitz requested that ATF not establish a viticultural area known as "Martha's Vineyard." As an alternative, Heitz suggested the viticultural area could be established using some other name. This position was supported by several Napa Valley wineries in their comments, as well as by Bob Thompson, a wine consumer. Thompson stated that allowing another region to use the appellation "Martha's Vineyard" would dilute consumer understanding of the "Martha's Vineyard" wine produced by Heitz. He further stated that there is little evidence that the area in Massachusetts has any history of being viticulturally significant, and that it is premature to allow such a designation.

Conclusion. ATF has examined all of the written comments relating to the name "Martha's Vineyard," as well as Treasury Decision ATF-53 which established the present appellation of origin system. Several conclusions are evident concerning the name.

Martha's Vineyard in Massachusetts demonstrates clear historical precedent for the name. The island was named in 1602 and has been known by no other name since at least 1640. There is no evidence to show the name "Martha's Vineyard" does not apply to the island in Massachusetts. ATF, therefore, finds that the name Martha's Vineyard statisfies the criteria in 27 CFR 4.25a(e)(2)(i) requiring evidence that the name of the viticultural area be locally and/or nationally known as referring to the area specified in the application.

Treasury Decision ATF-53 did not recognize vineyard designations as appellations of origin; thus, Heitz "Martha's Vineyard" qualifies only as additional information permitted on

labels under 27 CFR 4.38(f). As additional information, "Martha's Vineyard" may continue to appear on labels for wine derived from grapes grown in a bona fide vineyard known by that name. However, "Martha's Vineyard" is not the appellation of origin on such wine labels and may not be used in lieu of an appellation when an appellation of origin is required. Only appellations of origin meeting the requirements of 27 CFR 4.25a may be used when appellations of origin are required to appear on wine labels.

ATF does not believe authorization of "Martha's Vineyard" as a viticultural area will result in consumer confusion or deception. Heitz "Martha's Vineyard" label is currently well known as referring to a single vineyard; moreover, all bottles using this label show an appellation of origin "Napa Valley" as authorized by 27 CFR 4.25a. Wine originating from the island of Martha's Vineyard may bear "Martha's Vineyard" as an appellation of origin. ATF believes that consumers are unlikely to be confused between wines bearing labels of "Napa Valley" and "Martha's Vineyard" as appellations of origin due to their wide geographic separation. For the same reason, ATF will not prohibit Heitz Wine Cellars from continuing to use "Martha's Vineyard" as a vineyard designation on their labels in conjunction with an appellation of origin.

Geographic Criteria

Climate. As an island, Martha's Vineyard is influenced by coastal winds blowing from all directions which moderates its climate. In the spring, winds travel over cool ocean waters causing a late island spring but protecting grapes from spring frost. In the fall, ocean winds influenced by warm water prolong the growing season. Consequently, the Martha's Vineyard growing season averags 210 days as compared to 180 days on the New England coast. Summer winds also keep grape vines dry preventing rot and mildew. In winter, snowfall is significantly less and rainfall greater than that of coastal New England.

No comments were addressed to the climate of Martha's Vineyard. ATF finds that the climate of Martha's Vineyard distinguishes it from surrounding areas.

Topography. Martha's Vineyard is an island surrounded on the north by Vineyard Sound, on the east by Nantucket Sound, and on the south and west by the Altantic Ocean. The greatest length of the island from east to west is 19 miles, and greatest width about 9½ miles. Total size of Martha's Vineyard is approximately 100 square miles, or 64,000 acres.

Geologically, Martha's Vineyard was formed by a glacial moraine. Soils are deep, well drained sand and sandy loam, some of which are in the rocky phase.

Boundaries

The boundaries of the viticultural area are the island of Martha's Vineyard including the area known as Chappaquiddic which is connected to Martha's Vineyard by a sandbar. It is shown as a separate island on some maps. No comments were addressed to the boundaries and they are adopted as proposed.

General Information

Although Martha's Vineyard is rich in native American grapes, grapes were not cultivated there until 1971.

At the present time there are 46 acres of bearing commercial vineyards on Martha's Vineyard. All grapes grown commercially are Vinifera varieties, primarily Chardonnay, White Riesling, Gewurztraminer, Cabernet Sauvignon, Pinot Noir, and Merlot. There is one bonded winery on the island.

Miscellaneous

ATF does not wish to give the impression that by approving Martha's Vineyard as a viticultural area, it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Martha's Vineyard wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of contents in 27 CFR Part 9 is amended by adding § 9.73 to read as follows:

* * * * *

Sec.
9.73 Martha's Vineyard.
* * * * *

Par. 2. Subpart C is amended by adding § 9.73 which reads as follows:

§ 9.73 Martha's Vineyard.

(a) *Name.* The name of the viticultural area described in this section is "Martha's Vineyard."

(b) *Approved maps.* The approved map for determining the boundary of the Martha's Vineyard viticultural area is the U.S.G.S. map, "Providence, R.I.; Mass.; Conn.; N.Y.," scaled 1:250,000, edition of 1947 revised 1969.

(c) *Boundaries.* The Martha's Vineyard viticultural area is located entirely within Dukes County, Massachusetts. The boundary of the Martha's Vineyard viticultural area is the shoreline of the islands named "Martha's Vineyard" and "Chappaquiddic Island" on the "Providence" U.S.G.S. map, and the

viticultural area comprises the entire area of the islands.

Signed: October 23, 1984.

W. T. Drake,

Acting Director.

Approved: December 17, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-68 Filed 1-2-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 762, 816 and 817

Suspension of Certain Regulations

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

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is suspending certain portions of its regulations containing the definitions of fragile lands, historic lands, and adverse physical impact. OSM is also suspending portions of its regulations which contain the performance standards for the backfilling and grading of previously mined areas to the extent that they apply the concept of adverse physical impact in determining the required amount of highwall elimination. This action is being taken as a result of an agreement by the parties, approved in a December 3, 1984 District Court Order, withdrawing certain issues from consideration in Round III of the present litigation on OSM's permanent program regulations.

EFFECTIVE DATE: February 4, 1985. This suspension will be effective until final rules implementing the agreement are promulgated.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; (202) 343-4264.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and established performance standards to be achieved by different operations. 30 CFR Chapter VII. As part of that process, on September 14, 1983 (48 FR 41312) and September 16, 1983 (48 FR 41720) OSM promulgated final rules amending certain portions of its permanent regulatory program. In part, the regulations affected were: (1) Those in 30 CFR Part 762 which set forth the procedures for implementing the requirements of section 522 of the Act for designating lands unsuitable for all or certain types of surface coal mining operations; and, (2) those in 30 CFR Parts 701, 816 and 817, which set out the performance standards applicable to remining operations and, in particular, highwall reclamation.

These regulatory revisions were challenged in Round III of *In Re Permanent Surface Mining Litigation II*, Civil Action No. 79-1144 (D.D.C.). However, before that portion of the case had been decided, the court issued an Order on December 3, 1984 approving an agreement between the Plaintiff Citizen and Environmental Organizations and the Defendant Secretary of the Interior which withdrew from the litigation certain issues involving the regulations described below. A portion of that agreement called for the suspension of certain regulations within 30 days of the Order. This notice implements the agreement.

Fragile and Historic Lands

In revising the regulations having to do with section 522 of the Act, OSM changed the definitions of fragile lands and historic lands found at 30 CFR 762.5 (48 FR 41325). The revised definitions required a showing that irreparable or permanent damage could occur to lands by surface mining operations before such lands could be classified as either historic or fragile. The previous definitions at 30 CFR 762.5 (1982), simply required a showing that some damage could occur before such lands could be classified as either historic or fragile. Section 522(a)(3)(B) of the Act which is the statutory authority for this portion of the regulations requires a showing of possible "significant damage" before a designation of unsuitability may occur.

The settlement agreement calls for the suspension of the definitions of "fragile lands" and "historic lands" contained at 30 CFR 762.5 (1983). In compliance with the agreement, the phrase "beyond an operator's ability to repair or restore," which was added to the definitions in 1983, is suspended. This will mean that instead of requiring a showing of irreparable or permanent damage to the lands to allow for designation of an area as unsuitable for mining, a showing of significant damage will be sufficient. Pursuant to the agreement, OSM will also propose a rule in the **Federal Register** amending 30 CFR 762.5 and will redefine "fragile lands" and "historic lands" to require only a showing of significant damage before such lands can be designated as unsuitable for mining pursuant to section 522 of the Act. Based on the public comment received, OSM will then promulgate an appropriate final rule.

Highwall Elimination in Remining Situations

On September 16, 1983 (48 FR 41720), OSM revised various performance standards pertaining to remining operations. OSM created a new definition of "adverse physical impact" at 30 CFR 701.5. Also, in 30 CFR 816.106(b) and 817.107(b) OSM incorporated the concept of adverse physical impact as a threshold requirement for reclamation of the highwall in remining operations. The effect of these changes was no longer to require the achievement of approximate original contour and complete elimination of preexisting highwalls in remining operations which did not cause or were not expected to cause an "adverse physical impact" on the pre-existing highwalls, even where there was reasonably available spoil to eliminate the highwalls in the immediate vicinity of the highwalls.

The settlement agreement requires OSM to suspend 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 insofar as they fail to require all persons conducting surface coal mining and reclamation operations to use all reasonably available spoil to backfill highwall(s) in all remining situations. This suspension will mean that the concept of adverse physical impact will no longer apply and all persons conducting remining operations will be required to use all reasonably available spoil in the immediate vicinity of the remining operation to backfill the highwall to the maximum extent technically practical. Pursuant to the agreement, OSM will also propose a rule in the **Federal Register** which will remove 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 from the Code of Federal Regulations.

In consideration of the foregoing, the following regulations in 30 CFR Parts 701, 762, 816 and 817 are suspended.

Dated: December 26, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

§ 701.5 [Amended]

1. In 30 CFR 701.5, the definition of "adverse physical impact" is suspended.

§ 762.5 [Amended]

2. In 30 CFR 762.5, the phrase "beyond an operator's ability to repair or restore" in the definitions of "fragile lands" and "historic lands" is suspended.

§ 816.106 [Amended]

3. 30 CFR 816.106(b) is suspended.

§ 817.107 [Amended]

4. 30 CFR 817.107(b) is suspended.

[FR Doc. 85-62 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 926

Approval of Permanent Program Amendment from the State of Montana Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Montana as an amendment to the State's permanent regulatory program (hereinafter referred to as the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes procedures for the assessment and waiver of civil penalties, including implementation of a point system, and revises the regulations governing informal hearings, issuance of notices of noncompliance and cessation orders, operator's inability to comply, and continuation of reclamation operations during the time the order is in effect. Montana submitted the proposed program amendment on January 3, 1984. OSM published a notice in the **Federal Register** on February 6, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 4385). The public comment period ended March 7, 1984. On March 6, 1984, Montana submitted a revised form of the proposed amendment. OSM announced receipt of the revisions in the March 22, 1984 **Federal Register** (49 FR 10675) and reopened the comment period until April 23, 1984.

In its final rule publication on March 31, 1984, Montana further revised the proposed amendment. Montana submitted a copy to OSM on April 2, 1984. Therefore, on May 7, 1984, OSM reopened the public comment period until May 22, 1984 (48 FR 19340). Montana further clarified its final rule on September 20, 1984. OSM subsequently reopened the commit period on October 26, 1984, with a closing date of November 12, 1984 (49 FR 43071).

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 926 codifying decisions concerning the Montana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: William R Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION: .

I. Background

The Montana program was conditionally approved by the Secretary of the Interior on April 1, 1980 (45 FR 21560). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560) and the February 11, 1982 **Federal Register** (47 FR 6266).

II. Submission of Revisions

On January 3, 1984, Montana submitted to OSM a program amendment that, among other things, addressed civil penalties. The proposed amendment consists of proposed regulations governing procedures for the assessment and waiver of civil penalties, implementation of a point system for civil penalties and waivers, issuance of notices of noncompliance and cessation orders, informal hearings, inability to comply with a notice of noncompliance or cessation order, and continuation of reclamation activities during the period an order is in effect. The Feburary 6, 1984 **Federal Register** (49 FR 4385) announced receipt of the materials and opened the initial public comment period. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. However, the State of Montana conducted a public hearing on February 2, 1984, to receive comments on the adequacy of Montana's proposed regulations. As a result of comments received at the hearing, the State on March 6, 1984, submitted revised proposed regulations addressing civil penalties. OSM announced receipt of the revisions in the March 22, 1984 **Federal Register** (49 FR 10675) and reopened the comment period in order to allow the public an opportunity to review and comment on the revised material. The comment period closed April 23, 1984. The Montana Department of State Lands (DSL) published the final rules relating to civil penalties on March 31, 1984 and submitted a copy to OSM for approval on April 2, 1984. A review by OSM indicated that the DSL made minor revisions to the rules prior to publication in the Montana Administrative Record. Therefore, on May 7, 1984, OSM reopened the public comment period to allow the public an opportunity to review and comment on this revised material (49 FR 19340). This comment period closed on May 22, 1984. The OSM review identified minor deficiencies in the Montana submission. The State was notified July 25, 1984, of OSM's concerns and subsequently provided clarifying material on September 20, 1984. OSM announced receipt of the new material in the October 26, 1984 **Federal Register** (49 FR 43071) and reopened the public comment period until November 12, 1984. No additional comments were received.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the revised program amendment to the Administrative Rules of Montana (ARM) as submitted by Montana on April 2, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, as descussed below.

A. ARM 26.4.1206 Notices and Cessation Orders: Service

Montana has revised this section so that it applies to three different enforcement orders—the notice of violation and proposed penalty (including the assessment worksheet),

the notice of noncompliance, and the cessation order. Prior to this revision the service requirements applied only to the notice of violation and the cessation order. Montana has also changed the name of the State notice of violation form to "notice of violation and proposed penalty," a name which more accurately reflects its content and function. Montana's notice of noncompliance corresponds to the Federal notice of violation, while its notice of violation and proposed penalty is primarily a civil penalty assessment notification form. The Director finds that these changes are consistent with the Federal regulations at 30 CFR 843.14 and do not render this section less stringent than section 521(a)(5) of SMCRA.

B. ARM 26.4.1207 Notices of Noncompliance and Cessation Orders: Informal Hearings

Montana has revised this section to replace the term "notice of violation" with "notice of noncompliance" to reflect accurately State enforcement terminology. The State has also added a provision exempting certain notices of noncompliance and cessation orders from the automatic expiration provisions of ARM 26.4.1207(1). Those enforcement actions which cease mining will not automatically expire after 30 days if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held more than 30 days after service of the notice or order. The Director finds these changes to be consistent with 30 CFR 843.15 and no less stringent than section 521(a)(5) of SMCRA.

C. ARM 26.4.1208 Notices of Noncompliance and Cessation Orders: Effect of Inability to Comply, and *ARM 26.4.1209 Notices of Noncompliance and Cessation Orders: Continuation of Health and Safety Related Activities*

Montana has revised these sections to reflect current State enforcement terminology, replacing "notice of violation" with "notice of noncompliance". The Director finds these changes to be consistent with 30 CFR 843.18 (inability to comply) and 30 CFR 843.11(d) (continuation of activities under cessation of mining), and no less stringent than section 521 of SMCRA.

D. ARM 26.4.1211 Procedure for Assessment and Waiver of Civil Penalties

This section sets forth the procedural requirements for civil penalty assessments and waivers. Although no provision of this section specifically requires that the operator be given a copy of the assessment worksheet, as required by 30 CFR 845.17(b), Montana's notice of violation and proposed penalty form contains such a worksheet: ARM 26.4.1206 requires that the operator be served a copy of this document. Therefore, the Director finds that these provisions are no less stringent that section 518 of SMCRA.

E. ARM 26.4.1212 Point System for Civil Penalties and Waivers

This section establishes a point system for assessment and waiver of civil penalties based on the history of violations during the year preceding the violation being assessed, the seriousness of the violation, the negligence on the part of the permittee, and the good faith shown by the permittee in abating the violation. Montana assesses all violations a separate penalty for each day the violation continues. Therefore, the Director finds the Montana provisions to be consistent with 30 CFR 845.15(a).

Despite the differences in terminology, Montana's systems for determining penalty points based upon the seriousness of the violation, negligence of the operator and good faith of the operator in attempting to achieve compliance are virtually synonymous with those used by OSM. Montana's system differs slightly however, from that used by OSM in that history points are calculated based upon a company's total operations within the State. The Director finds these provisions to be no less stringent than section 518(a) of SMCRA, and that the Montana provisions are consistent with the Federal regulations at 30 CFR 845.13, 30 CFR 845.14, and 30 CFR 845.15(a).

IV. Public Comments

No comments on this proposed amendment were received from any Federal agencies. The Northern Plains Resource Council provided the only comments received on this amendment, comments which were based on the January 3, 1984 version. Discussion of these comments follows:

1. The commenter suggested that Montana provide a list of the exceptional factors which would justify a waiver of the use of the point system for civil penalty assessment purposes as provided in ARM 26.4.1211(3). Montana elected not to do so, nor is such a listing required by SMCRA or the Federal regulations at 30 CFR 845.16.

2. The commenter expresses concern that Montana's history point assessments might not be accurate because of recordkeeping time lags. OSM finds this comment to be nongermane as administrative problems do not lie within the purview of this process. The commenter also requests that Montana include a specific counterpart to 30 CFR 845.13(b)(1)(ii), requiring the counting of each violation for history point purposes without regard to whether it was assessed a civil penalty. ARM 26.4.1212(a) requires the assessment of one history point for each violation contained in a notice of noncompliance and five points for each violation contained in a cessation order. Since a notice of noncompliance or cessation order will be issued for every cited violation, Montana will in fact count every violation without regard to whether it was assessed a civil penalty.

3. The commenter suggests that Montana adopt language and a point system closer to the used by OSM in assessing the seriousness factor of the civil penalty formula. Montana has adopted a system similar to that used by OSM, although it does not expressly differentiate between damage on or off the permit area and does not include the probability of occurrence point scale listed in 30 CFR 845.13(b)(2)(i). OSM believes Montana's separate consideration of both the significance of the actual or potential harm posed by the violation and the probability of its occurrence is consistent with 30 CFR 845.13(b)(2).

4. The commenter suggests that Montana revise the wording of the definition of "administrative requirement" in ARM 26.4.1212(1)(b)(ii) to require that it be one that does not directly *protect*, rather than affect, public health, safety, or the environment. The commenter also suggests that the timeliness of filing records and reports be incorporated into the definition. OSM does not define "administrative requirement" as used in 30 CFR 845.13(b)(2)(ii), nor is this term defined in SMCRA. OSM believes the Montana's definition is both reasonable and consistent with the Secretary's intent in promulgating 30 CFR 845.13(b)(2)(ii). In this context there is little, if any, difference in the meaning between "protect" and "affect." Timeliness of filing is more properly considered in determining the existence of a violation. ARM 26.4.1212(1)(b)(ii) indirectly provides for its inclusion in the civil penalty assessment process by considering the degree of impairment of administration caused by the violation.

5. The commenter suggests that Montana adopt the OSM language and definitions in 30 CFR 845.13(b)(3)(ii) concerning negligence. By letter of September 20, 1984, Montana has affirmed that, although the terminology differs slightly so as to conform with that used in Montana statutory and case

law, the categories and definitions found in ARM 26.4.1212(1)(c) are virtually synonymous with those found in the Federal rule.

6. The commenter objects to awarding an operator good faith points for pointing out a violation on his own initiative. Montana's April 2, 1984, revision of ARM 26.4.1212(1)(d) completely eliminates this possibility.

V. Director's Decision

The Director, based on the above findings, is approving the April 2, 1984 amendment to the Montana program. The Director is amending Part 926 of 30 CFR Chapter VII to reflect approval of the above State program modification.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: December 26, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

PART 926—MONTANA

30 CFR 926.15 is amended by adding a new paragraph (d) as follows:

§ 926.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendment submitted to OSM on April 2, 1984, is approved effective January 3, 1985: Montana's regulations governing service of notices and orders at § 26.4.1206 of the Administrative Rules of Montana (ARM), informal hearings for notices of noncompliance and cessation orders which cease mining at ARM 26.4.1207, the effect of an inability to comply with a notice or order at ARM 26.4.1208, the continuation of reclamation operations and health and safety related activitities under notices and orders at ARM 26.4.1209, the procedure for assessment and waiver of civil penalties at ARM 26.4.1211, and a point system for determining civil penalty amounts and waivers thereof at ARM 26.4.1212.

[FR Doc. 85-64 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 934

Approval of Permanent Program Amendment from the State of North Dakota Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by the State of North Dakota as an amendment to the State's permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blaster training, examination and certification.

North Dakota submitted the proposed program amendment on February 27, 1984. OSM published a notice in the **Federal Register** on April 3, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 13158). The public comment period ended May 3, 1984.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 934 codifying decisions concerning the North Dakota program are being amended to implement this action.

This rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Williams Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

The North Dakota program was approved by the Secretary of the Interior on December 15, 1980, conditioned on the correction of 13 minor deficiencies. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82215-82248), February 9, 1983 **Federal Register** (48 FR 8902), and the November 9, 1983 **Federal Register** (48 FR 51458).

II. Submission of Revisions

On February 27, 1984, the State of North Dakota submitted to OSM an amendment to its approved permanent regulatory program. The proposed amended is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of a narrative description of the blaster's training examination and certification program; proposed regulations governing the use of explosives and the training, examination and certification of blasters; and a comparison of State and Federal regulations for blaster certification.

At the time of the Secretary's approval of the North Dakota program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the

State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the North Dakota program, the Secretary specified that North Dakota would be required to adopt such provisions following promulgation of the Federal standards (45 FR 82233, December 15, 1980).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter 11 (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining, and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience, and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State's blaster certification program has been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On April 3, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 13158). The public comment period ended May 3, 1984. The opportunity to request a public hearing was provided, but none was requested.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by North Dakota on February 27, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

A. General

The North Dakota submission requires the Public Service Commission to provide for the training, examination and certification of all blasters. It sets standards and procedures for Commission approval of blasting certification instructors, and permits the coal mining industry to set up its own training courses subject to Commission approval.

As submitted, North Dakota's examination and application materials require employers to nominate all candidates for blaster certification. The preamble to the Federal regulations (48 FR 9492) indicates that training, examination, and certification opportunities should be provided to all prospective blasters, not just those presently employed by a mining company. The Director expects North Dakota to abide by Section 69-05.2-31-01(1) of the North Dakota Administrative Code (NDAC), and to provide for the training, examination and certification of all persons seeking to become certified as blasters, regardless of current employment status.

B. NDAC 69-05.2-01-02 Definitions

Section 69-05.2-01-02(7) defines the term "blaster" in a manner similar to and no less effective than the Federal definition at 30 CFR 850.5.

C. NDAC 69-05.2-17-01 Performance Standards—Use of Explosives—General Requirements

Section 69-05.2-17-01 provides that, no later than twelve months after the effective date of Chapter 69-05.2-31, all surface mining blasting operations shall be conducted under the direction of a blaster certified according to the provisions of that Chapter. It also sets forth certain operational requirements for certified blasters. In accordance with North Dakota's approved program, no underground mining regulations have been adopted. The Director finds these provisions to be no less effective than the Federal regulations at 30 CFR 816.61(c).

D. NDAC 69-05.2-31 Training, Examination and Certification of Blasters

1. Section 69-05.2-31-01 sets forth the training requirements for persons seeking to become certified blasters. Training courses may be developed and taught by coal mining industry personnel upon the approval of the Public Service Commission, but they may not be offered more frequently than once every three months. The Director finds these provisions to be no less effective than the Federal regulations at 30 CFR 850.13.

2. Section 69-05.2-31-02 requires both a written examination and practical field experience prior to certification. Each applicant would take one of three different examinations. An initial OSM technical review of the sample examination found that it did not include all the topics listed in NDAC 69-05.2-31-01, as is required by NDAC 69-05.2-31-02(1). North Dakota subsequently revised the examinations to ensure full coverage of all topics. As discussed under the general findings section, the Director expects that North Dakota will not require the certification of current employment for candidates who can otherwise meet the practical field experience requirements of NDAC 69-05.2-31-02(2). The Director finds the State regulations to be no less effective than the Federal regulations at 30 CFR 850.14.

3. Section 69-05.2-31-03 establishes the conditions of blaster certification and recertification. After initial three-year certification period, blasters must be recertified by either re-examination or the satisfactory completion of a blaster-related refresher course. Refresher courses must be alternated with examinations for successive recertification purposes. Other provisions require certificate protection and presentation to an authenticated representative upon request, and prohibit certificate assignment or transfer. No blaster may delegate his responsibility to uncertified individuals. The Director finds these provisions to be no less effective than the Federal regulations at 30 CFR 850.15(a), (c), (d), and (e).

4. Section 69-05.2-31-04 specifies the conditions under which a blaster's certificate may or shall be revoked, along with the procedural requirements for such actions. The Director finds these provisions to be virtually identical to and no less effective than the requirements of 30 CFR 850.15(b).

IV. Public Comments

Of the Federal agencies invited to comment on the proposed amendments, responses were received from the Army Corps of Engineers, the Mine Safety and Health Administration, the Fish and Wildlife Service, the National Park Service, the Cooperative Extension Service, the Minerals Management Service, the Farmers Home Administration, and the Bureau of Mines. The Bureau of Mines suggested numerous technical changes in the course outline and examination questions, but did not comment on the proposed regulations themselves. OSM conducted a further technical review of the examination materials and, after discussions with and revisions by North Dakota, resolved all deficiencies. Therefore, no regulatory changes are necessary. No other substantive comments were received.

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA, 30 U.S.C. 1253(b)(1), and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the February 27, 1984, amendment to the North Dakota program. The Director is amending Part 934 of 30 CFR Chapter VII to reflect approval of the above State program modification.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934:

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

Dated: December 24, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

PART 934—NORTH DAKOTA

30 CFR 934.15 is amended by adding a new paragraph (e) as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(e) The following amendment submitted to OSM on February 27, 1984, is approved effective January 3, 1985: North Dakota's definition of "blaster" and renumbering of the definitions section, as contained in the North Dakota Administrative Code (NDAC) at Section 69-05.2-01-02; the general requirements for the use of explosives at NDAC 69-05.2-17-01; the North Dakota blaster training, examination and certification program at NDAC 69-05.2-31; and all other items submitted by North Dakota, provided that North Dakota promulgates these regulations in a form identical to the submitted to and reviewed by OSM.

(Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253))

[FR Doc. 85-63 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

31 CFR Part 129

Foreign Portfolio Investment Survey

Note.—This document was originally published in the **Federal Register** of Tuesday, December 11, 1984, on page 48184. It is being republished today at the request of the agency.

AGENCY: Treasury.

ACTION: Notice of reporting requirements and availability of forms.

SUMMARY: By this notice the Treasury Department is informing the public that it is conducting a survey of foreign portfolio investment in the United States. All persons who meet the reporting requirements set forth in this Notice must report. Survey data is based on foreign holdings as of December 31, 1984, and reports are due at the Treasury by March 31, 1985. Any United States issuer of securities that meets the benchmark survey asset test for a routine large issuer and any United States holder of record that exceeds the exemption level for aggregate foreign holdings should contact the Treasury Department at the telephone number listed below to obtain a copy of the Forms and Instructions if its Chief Financial Officer has not yet received a copy.

FOR FURTHER INFORMATION CONTACT: Bertram Wolfe, Foreign Portfolio Investment Project, Office of the Assistant Secretary, International Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, Telephone: (202) 566-5507.

SUPPLEMENTARY INFORMATION: The International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101, et seq.) as amended, [the "Act"], and E.O. 11961 of January 19, 1977, (42 FR 4321), as amended, require the Department of the Treasury to conduct periodic comprehensive surveys of foreign portfolio investment in the United States. Regulations governing the current Survey were published in the **Federal Register**, April 9, 1984, on pp. 14054-14057 (31 CFR Part 129 at pp. 339-344). The preamble to those regulations stated that the exemption levels would subsequently be published in the **Federal Register.**

Who Must Report and Exemption Levels

United States Issuers of Securities. The reporting obligations of United States issuers are governed by the following classifications:

Routine Large Issuer Reporters—Asset Test. A report is required on Form FPI-1 (Report for United States Issuers of Securities) from every United States business enterprise issuer (irrespective of whether it has evidence of foreign investment in its securities) which, as of the latest available closing date of its accounting records, had:

(1) Total consolidated assets of more than *$1 billion*, if it is a nonbanking business enterprise;

(2) Total consolidated assets of more than *$2 billion*, if it is a banking business enterprise.

Selective Small Issuer Reporters—Response Required When Contacted. A report on Form FPI-1 is also required from every United States issuer with total consolidated assets of at least $100 million that is informed by the Treasury Department that it must report.

Total Exemption—Asset Test. A report on Form FPI-1 is not required from any United States issuer who, as of the latest available closing date of its books, had total consolidated assets of less than $100 million.

Exempted Holders of Record. A report on Form FPI-2 (Report for United States Holders of Record) is not required from any holder of record who held, for all its foreign customers, combined investments in securities of United States issuers aggregating $10 million or less based on the fair market value as of December 31, 1984. This exemption does not apply to holders of record under common management or control, except where aggregate holdings of all holders of record under a single parent institution total $10 million or less.

Charles Schotta,

Deputy Assistant Secretary for Arabian Peninsula Affairs.

[FR Doc. 84-32419 Filed 12-10-84; 10:07 am]

BILLING CODE 4810-25-M

Fiscal Service

31 CFR Parts 209, 210, and 240

Nomenclature Changes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rules, nomenclature changes.

SUMMARY: The Financial Management Service published a final notice on December 17, 1984 (49 FR 48918) amending certain provisions of 31 CFR Part 210. It changed all references of "financial organization" to "financial institution" to make the terminology of the regulation consistent with that commonly used in the private sector. This document makes similar changes to Parts 209 and 240, and additional changes to Part 210.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: James R. Finegan, ACH Programs Branch, (202) 535-6331.

1. The title of 31 CFR Part 210 is amended by deleting the words "financial organization" and inserting in their place the words "financial institution".

2. In addition to the amendment set forth above, 31 CFR Subchapter A, is further amended by deleting the words "financial organization" and inserting "financial institution" in the following places:

A. 31 CFR Part 209—Table of Contents:
Sec. 209.6
Sec. 209.9
Sec. 209.11
B. 31 CFR 209.1(a)—Introductory text
C. 31 CFR 209.2(b)
D. 31 CFR 209.2(e)
E. 31 CFR 209.3(b)(1)
F. 31 CFR 209.4(a), (b)(1), (c)
G. 31 CFR 209.5(a), (b)(1), (c)
H. 31 CFR 209.6—Title
I. 31 CFR 209.6(a), (a)(2), (a)(3), (b)
J. 31 CFR 209.7
K. 31 CFR 209.8—Title
L. 31 CFR 209.8
M. 31 CFR 209.9(a), (b)
N. 31 CFR 209.10—Title
O. 31 CFR 209.10
P. 31 CFR 209.11
Q. 31 CFR Part 210—Table of Contents:
Sec. 210.7
R. 31 CFR 210.1
S. 31 CFR 210.2(b), (e), (j)(2)
T. 31 CFR 210.3(a), (c), (d)
U. 31 CFR 210.4(a), (b)(1), (c), (f), (g), (h)
V. 31 CFR 210.6(a)
W. 31 CFR 210.7—Title
X. 31 CFR 210.7(a), (b), (c), (d), (e)(2), (f), (g), (h)
Y. 31 CFR 210.8
Z. 31 CFR 210.9(a), (a)(2), (a)(3), (b)
AA. 31 CFR 210.10(a), (b), (c)(1), (c)(2), (d), (e)
BB. 31 CFR 210.11(b), (c)
CC. 31 CFR 240.2(d), (g), (h), (n)
DD. 31 CFR 240.10(c)(1), (d)
EE. 31 CFR 240.14(b)(c)

(5 U.S.C. 301; 12 U.S.C. 391)

Dated: December 26, 1984.

W. E. Douglas,

Commissioner.

[FR Doc. 85-67 Filed 1-2-85; 8:45 am]

BILLING CODE 4810-35-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 211

[Docket RM 84-6]

Mask Work Protection; Implementation of the Semiconductor Chip Protection Act of 1984

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office is amending 37 CFR Chapter II on an interim basis by adding a new Part 211. These regulations implement certain provisions of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620 (Nov. 8, 1984). The Act establishes a registration system for mask works to be administered by the Copyright Office and authorizes the Office to establish regulations in several cases, including the registration of claims of protection in mask works, the recordation in the Copyright Office of documents pertaining to mask works and the mask work notice. Part 211 of 37 CFR Chapter II sets forth specific requirements for filing applications for registration of mask work claims and for the recordation of documents. The regulations also provide examples of methods of affixation and placement of the mask work notice. Since owners of mask works may begin filing applications for registration on January 7, 1985, in order to provide guidance to the public on the implementation of the Act, the Copyright Office has decided to make these regulations effective, on an interim basis, upon their publication in the **Federal Register**. A lengthy comment period is provided, however, to allow for review of the regulations, in light of experience, before they are adopted in final form.

EFFECTIVE DATE: January 3, 1985. Written comments should be received on or before March 4, 1985.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Ave., SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620. The Act creates a new form of intellectual property law separate and apart from any earlier law. The legislation consists of an amalgam of patent and copyright principles, but also contains new features. The law will be codified as chapter 9 of title 17 of the U.S. Code, and will be administered by the Copyright Office. Noteworthy is the requirement in section 908(a) of the Act [1] that registration in the Copyright Office of a claim of protection in a mask work must be made within two years of first commercial exploitation of the work anywhere in the world or protection under the Act terminates. The Act also provides for a notice of mask work protection; however, unlike the copyright notice, this notice is not a condition of protection.

Under section 905 of the Act, the owner of a protected mask work enjoys the exclusive rights to do and to authorize any of the following:

"(1) To reproduce the mask work by optical, electronic, or any other means;

(2) To import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) to induce or knowingly to cause another person to do any of the acts described in paragraphs (1) and (2)."

The Act provides that the owner of these exclusive rights may transfer or license any or all of the rights by a duly signed written document, and authorizes the Register of Copyrights to record any transfer, license or other document pertaining to a mask work.

With the exception of the international transitional provisions in Section 914, all administrative functions and duties under the Act are made the responsibility of the Register of Copyrights.

In addition to specific grants of regulatory authority in connection with

[1] Citations to the Act will be to the text as published in the Congressional Record. 129 *Cong. Rec.* S 12913 (daily ed. Oct. 3, 1984).

issues as the mask work notice, there is a general reference in section 908(b) to the provisions of chapter 7 of title 17 U.S.C. relating to the regulatory authority of the Register. Section 702 of title 17 authorizes the Register of Copyrights "to establish regulations not inconsistent with law for administration of the functions and duties made the responsibility of the Register under this title." It also provides that "[a]ll regulations established by the Register under this title are subject to the approval of the Librarian of Congress."

On October 4, 1984, the Copyright Office issued a Notice of Inquiry and of Public Hearing in the **Federal Register** to advise the public that the Office would institute a rulemaking proceeding to implement certain provisions of the Semiconductor Chip Protection Act of 1984, and to invite public comment, views and information to assist it in the preparation of regulations (49 FR 39171). The Copyright Office was particularly interested in receiving public comment on a registration form, filing fee for registration and fees for other services, application for registration, deposit of identifying material, mask work notice and publication of registrations made by the Copyright Office.

At the public hearing on the implementing of the Semiconductor Chip Protection Act of 1984 that was held at the Copyright Office on October 18, 1984, representatives of the Semiconductor Industry Association (SIA) testified on the issues raised in the Notice of Inquiry and submitted a written statement for the record. During the course of the hearing, the Copyright Office circulated for information and comment a preliminary draft form, Form MW, to be used for registration of a claim of protection in a mask work. Following the hearing, supplemental comments were received from SIA and from other interested parties. The comment period was held open until October 31, 1984.

At the public hearing Mr. Rick Willson, a representative of SIA, discussed the terminology SIA would use in their presentation. He indicated that the terms were commonly understood in the semiconductor industry. Since the Copyright Office has decided to refer generally to the same terminology in its Interim Regulations, it may be helpful to summarize briefly Mr. Willson's comments.[2]

[2] For full text of Mr. Rick Willson's testimony, see *Testimony of the Semiconductor Industry Association, Transcript of the Public Hearing on the Implementation of the Semiconductor Chip Protection Act of 1984* (Oct. 18, 1984) (copy available at the Copyright Office).

(a) *Composite or single layer plots:* Mr. Willson noted that, before the development of computer-aided design (CAD) systems, a circuit design was usually drawn by hand. As circuits grew larger and more complex, however, this process gave way to composite or single layer plots generated by electrostatic plotters, pen plotters, and other devices.

(b) *Data base tape or disk:* Once plots are made and checked either manually or by machine, the information is fixed in a data base tape or disk. These tapes are made using a CAD system. The data on a tape is then "fractured," that is, broken up into a format more accessible to a machine.

(c) *Reticle:* Mr. Willson described a reticle as a piece of glass, quartz, or some other type of material, usually coated with a hard substance like chrome. The patterns on the data base tape are transferred to the reticle. The reticle shown at the hearing was 10 times the final size of the "chip" (or "die"); however, he indicated the magnification varies. Using one type of technology, a reticle is reduced further to make a plate or mask from which a wafer is then exposed.

(d) *Plastic overlays:* Once reticles are made, the process is checked for accuracy. According to Mr. Willson, the most common way to verify the data is to blow up the image from the reticle and make what are called "plastic overlays," usually on acetate material. These overlays, essentially photographic blow-ups, may be checked against single layer plots.

Mr. Willson stressed, however, that the technology is changing rapidly. He indicated that a goal of the semiconductor industry was to go from conceptual design to the die as quickly as possible. Where an electron beam machine is used, it is sometimes possible to write directly on a wafer, thereby eliminating most intervening steps. Although, in such cases, it would be impractical to make plastic overlays, he thought it would always be possible to make composite plots, or to take photographs of a mask work embodied in an intermediate or final form of a semiconductor chip product.

The general overview of terminology presented by SIA at the public hearing was particularly helpful to the Copyright Office in analyzing the various proposals put forward with respect to the deposit of identifying material for registration purposes. It became apparent that there is no one uniform process used in the semiconductor industry to produce circuit chips and that any registration requirements issued by the Copyright Office should be flexible enough to accommodate a wide spectrum of practices. In drafting its regulations the Office has been sensitive to the complexities inherent in the semiconductor industry. The Copyright Office reviewed carefully the oral testimony and written comments as well as the language of the Semiconductor Chip Protection Act of 1984 and reached certain conclusions with respect to the administration of the Act. The following discussion of the issues considered by the Office in preparing its regulations covers generally the same points raised in its Notice of Inquiry and of Public Hearing (49 FR 39171; Oct. 4, 1984).

1. *Registration form.* Section 908(c) of the Act requires that applications for registration in the Copyright Office of claims of protection in mask works must be made on a form prescribed by the Register of Copyrights and include "any information regarded by the Register as bearing upon the preparation or identification of the mask work, the existence or duration of protection of the mask work * * * or ownership of the mask work."

In accordance with the Act, the Copyright Office has adopted a form, designated Form MW, to be used to apply for registration of claims in mask works. As noted above, a preliminary draft of this form was made available for comment at the public hearing on October 18, 1984. The draft form has been revised and is currently being printed in final form. Copies of Form MW should be available upon request from the Public Information Office, Copyright Office, Library of Congress, Washington, D.C. 20559 on or about December 28, 1984. The regulations require the use of an original Form MW in filing all applications for registration of mask works in the Copyright Office on and after January 7, 1985. Photocopies of the form will not be accepted.

In its Notice of Inquiry, the Copyright Office invited public comment on whether, in view of the unique character of mask works, "a more detailed registration record [than that required for copyrights] would be beneficial to the public." It specifically asked: "Where a prior work has been substantially reproduced in a second mask work, should there be a clear indication in an application form of the portions reproduced and the new material added?" 49 FR at 39173. This concern was raised in light of the "reverse engineering" exception in section 906(a) of the Act.

Most commentators urged the Copyright Office to follow generally its experience in drafting existing forms for

copyright registration in preparing the new mask work form and regulations. They were concerned that the Office might require an applicant to supply a detailed description of the nature and scope of a claim, specifically identifying the "old" and "new" elements in a mask work. It was felt that, to require something more than a general statement of the nature of the contribution made in a particular case would be impractical and unduly burdensome, and might even become a "trap for the unwary" applicant. There was some support, however, for requiring an applicant "to indicate whether or not the work is a modified version of a prior work, and to identify any such prior work."

In revising the preliminary draft form, the Copyright Office decided not to require a detailed dissection of the "old" and "new" elements in a mask work. Form MW does require an applicant to describe generally at space 8 "the new, original contribution" for which protection is sought. There is recognition that, for the most part, mask works contain preexisting designs that are common in the semiconductor industry, or are designs which will have been previously registered for protection or commercially exploited. Consequently applicants are encouraged to describe any previous mask work upon which the new work is based in order to distinguish the new contribution from the preexisting material. The Copyright Office did adopt the SIA proposal that the phrase "which is the subject of this application" be added after "mask work" at space 5.

The Copyright Office welcomed the assistance provided by SIA and other commentators in clarifying several provisions of the draft registration form. Many suggestions were adopted and will be reflected in Form MW. Because of time constraints, there will not be any further opportunity for public comment on the form before it is issued in final form. As the Copyright Office, the semiconductor industry and the public develop experience under the regulations and Form MW, however, there will be occasion to revisit this matter and to make any necessary changes. The Office will particularly monitor the standards or originality developed for mask works under the Act to determine whether additional information should be required on Form MW and whether the Copyright Office should issue a new regulation on material not subject to protection under the Semiconductor Chip Protection Act of 1984.

2. *Filing fee for registration and fees for other services.* Under section 908(d) of the Act, the Register of Copyrights is authorized to "set reasonable fees for filing of applications to register claims of protection in mask works under this chapter [chapter 9], and for other services relating to the administration of this chapter or the rights under this chapter, taking into consideration the cost of providing those services, the benefits of a public record, and the statutory fee schedules under this title [title 17]." Although the Act did not specifically apply the copyright fee schedule in section 708 of chapter 7 to mask works, it did not preclude the application of the same or similar fees, and invited the Register to consider these fees in determining the cost of services relating to mask works.

In its Notice of Inquiry, the Copyright Office indicated that, with the exception of the fee for filing of an application for registration, the Register of Copyrights was inclined to establish, by regulation, that the fees for copyright services set in section 708 of title 17 U.S.C. apply, where appropriate, to services rendered by the Copyright Office under chapter 9. For the filing of an application for registration of a mask work claim, however, the Office noted a preference for a fee of twenty dollars ($20) in order to allow recovery of a higher percentage of costs.

No objection was raised at the public hearing or in written comments concerning the proposed fee schedule for services of the Copyright Office relating to mask works. The Copyright Office is issuing a regulation listing the fees for filing of applications for registration and other services. The filing fee for applications for registration is set at twenty dollars ($20), and the cost of other services reflects the fees established for comparable copyright services in section 708 of title 17.

3. *Application for registration.* (a) *Who May Apply.* In its Notice of Inquiry, the Copyright Office announced its intention, at that point, "to allow only the initial owner of all of the exclusive rights in a mask work, or a person who has obtained ownership of all rights in the work initially belonging to such owner, to be identified in an application as the 'claimant' for purposes of registration." In its discussion of this issue, the Office referred to the draft definition of "owner" of a mask work then under consideration by Congress where provision was made for the "author" of a mask work.

As finally enacted, section 901(a) of the Act no longer speaks of an "author" and defines the "owner" of a mask work as "the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter [chapter 9] of such person or representatives are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person's employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b)." In light of this new definition of "owner," the Copyright Office has decided, in new § 211.4(b)(2) of its regulations, to allow only the "owner of the mask work, or the duly authorized agent of any such owner" to apply for registration of a mask work claim.

Further guidance on this matter was provided in the *Explanatory Memorandum—Mathias-Leahy Amendment to S1201* (130 *Cong. Rec.* S12916, S12917 (daily ed. Oct. 3, 1984) (hereafter, the Senate Memorandum)). It was expressly stated in the *Senate Memorandum* that: "While the transferee of all rights under the Act is an owner, a licensee of all or some rights is not, a distinction recognized in section 903(b). While only an owner (including a transferee) may register a mask work under section 908, an exclusive licensee of all rights is also entitled, under section 910(b)(1), to bring an infringement action * * *." A document transferring less than all of the exclusive rights in a mask work, or licensing all or less than all rights in the work may be recorded in the Copyright Office.

(b) *Intermediate Forms.* A "semiconductor chip product" is defined in section 901 of the Act as including "the final or intermediate form of any product * * *." A mask work cannot be protected under the Act until it has been fixed in such a product. The question arises whether it is possible for an application for registration of a claim in a mask work to be made for a mask work fixed in an intermediate form of the product. Since, under section 904(a), the term of protection for a mask work is computed from the date of registration or first commercial exploitation, if multiple applications for registration were allowed, different parts of a semiconductor chip product fixed in final form at the same time could be protected for varying periods. In its Notice of Inquiry, the Copyright Office asked whether it should encourage or discourage this development, whether any safeguards or conditions should be

applied to protect the public interest, other than a clear disclosure of the basis of the claim, and what statements or descriptions of the basis of claiming are appropriate for mask works?

Most commentators urged the Copyright Office to register claims of protection for mask works fixed in intermediate forms of semiconductor chip products, and any revisions of such works where the material added is sufficiently original to merit protection as a new mask work. SIA noted that "[d]esigning the part of the gate array or ROM up to the final interconnection stages involves considerable expense and creativity, of the same kind as for other semiconductor chip products * * *. We therefore, urge that the Copyright Office expressly authorize the registration of semifinal gate arrays, ROMs, and similar intermediate products." SIA also discussed the registration of "cells" in cell libraries and significant "modules" contained in semiconductor chip products. There was concern that the Copyright Office register claims in such cells or modules as original mask works. This question is related to the issue of what is a "basic registration," and the Office position is discussed in the next point.

(c) *Single Basic Registration.* The Copyright Office understands that "gate arrays" (aggregations of gates without metal connections, which are later customized to the purchaser's specifications or by the purchaser) frequently comprise five or more layers of a final semiconductor chip product. They are nonfunctioning intermediate forms, which are intended to be incorporated in a functioning semiconductor chip product. "Cells" or "cell libraries" (collections of counters, registers, oscillators, and transistors) are an even more amorphous concept, which may refer to a one-transistor component of the chip or to a collection of functions comprising as much as 30 percent of the final semiconductor chip product.

While the industry has made clear its wish to register mask works fixed in gate arrays, cells, and other intermediate forms, the Copyright Office has grave concerns about the ramifications of such registrations on the standard of originality and the "reverse engineering" limitation on exclusive rights and the statutory damages provision of section 911(c). First, with respect to originality, the Copyright Office does not intend to examine the prior art. The Copyright Office will conduct a facial examination of the application and deposit, in light of the requirements of the statute, Office regulations and practices, and the case law as it develops. Since most mask works appear to result from a combination of previously existing components, the Office generally assumes that the nature of the "new contribution" will be very roughly analogous to a copyright claim in a compilation of pre-existing materials. To the extent this is true, attempts to register mask works fixed in intermediate forms, which comprise small "parts" of final semiconductor chip products, make it difficult to apply any standard of originality without examining the prior art. While a one-transistor cell may be so unique that it is patentable, it does not seem possible to determine originality of a small component when conducting a facial examination. To illustrate the point with a rough analogy: a cartographic representation of the United States with a few points of interest identified for each of the 50 states (capital, principal river, and largest city) is arguably copyrightable as a compilation, but "compilation authorship" for a single state under the same facts (selection of three points of interest) would be de minimis and uncopyrightable.

Second, a principal feature of the Act, and one which has no counterpart in copyright law, is the limitation on exclusive rights to permit "legitimate" reverse engineering. Under section 906(a), a mask work may be dissected and disassembled for purposes of teaching, analyzing, or evaluating the concepts or techniques embodied therein, and the results of this "reverse engineering" may be incorporated in an original mask work made for distribution, without infringement of the mask work right. The two key elements in establishing the reverse engineering defense are that the person invoking the defense can show by a "paper trail" that legitimate analysis and study, as compared with direct, simple copying took place, and that some new contribution was made, which resulted in an original mask work. What if the person claiming the reverse engineering defense satisfies both of the former conditions, but nevertheless identically copies a certain feature which was registered separately as a mask work fixed in an intermediate form of a product? Does the reverse engineering defense fail? This point is ultimately for the courts to decide. The Copyright Office is concerned, however, that the registration system may be manipulated to make the burden of establishing the reverse engineering defense greater than that intended by Congress, and hence frustrate the congressional intent to sanction legitimate reverse engineering.

Third, section 911(c) allows the mask work owner to elect statutory damages of $250,000 maximum "with respect to any one mask work for which any one infringer is liable * * *." The Copyright Office is concerned that registration may be sought in intermediate form for several "parts" of a final semiconductor chip product in order to increase the potential award of statutory damages. For example, if Company X claims separate protection in "mask works" fixed in intermediate form that comprise six different "parts" of a final semiconductor chip product, and all "parts" are later infringed by one act of unauthorized reproduction, distribution, or importation, a claim for statutory damages may be made of six times $250,000. While the Act gives the court discretion to award an amount it considers just, the court may be bound to award statutory damages for each separately registered mask work. Even if the courts can generally deal with this problem by lowering the award for each work sufficiently, the chilling effect on competition of potentially great statutory damage awards is a matter of concern.

As an interim solution, pending review in light of experience, the Copyright Office has concluded that it should allow registration of certain mask works fixed in intermediate forms of semiconductor chip products, but that beyond a certain limit, registration will be refused until the courts give clear guidance about the standard of originality. The interim regulation provides that where registration is requested for a mask work fixed in an intermediate form of a semiconductor chip product, that fact shall be disclosed on the application form (at space 2) and the applicant aver whether the proferred "mask work" consists of 20 percent or more of a final semiconductor chip product. If the mask work comprises less than 20 percent of a final product, the Office will refuse to register the work as fixed in the intermediate form on the ground that, absent an examination of the prior art, it must be presumed that a mask work comprising less than 20 percent of the final chip is de minimis, and an unoriginal combination of staple elements, commonplace in the semiconductor industry. The refusal to register may of course be tested in the courts against a purported infringer, or against the Office itself. Alternatively, the claimant can elect to register the "entire" mask work, as fixed in a final semiconductor chip product.

As a preliminary matter, the Office believes some limit must be placed on registration for mask works fixed in intermediate forms to avoid registration of spurious claims, and to carry out the congressional intent to sanction legitimate reverse engineering. The Office believes that the limit established by the regulation is reasonable in light of the purposes of the Act, and will not significantly, if at all, hamper the industry's ability to *license* gate arrays, cells, and other intermediate forms. Gate arrays and cells can be licensed separately, if they have marketable value, even though they are registered as part of a "larger" mask work fixed in a final semiconductor chip product.

Where registration has been made for an earlier version of a mask work fixed in an intermediate form of a semiconductor chip product, SIA commented that a second registration in the Copyright Office for a later version of the work "should confer mask work rights only in the registrable variations embodied in the second mask work, or in the new ensemble rather than the old parts as such, just as copyright in a derivative work confers rights only in the modifications or new ensemble."

The Copyright Office agrees that registration in the Copyright Office should only be made for original mask works. Certain mask work claims may be registrable at the time the work is fixed in an intermediate form of a semiconductor chip product; however, if registration is sought for the same version of the work fixed in a final form of the product, a second registration would be limited to any new original elements added to the earlier version of the mask work. For example, where registration has been made for a mask work fixed in nine layers of a semiconductor chip product, and registration is sought for a later version of the work consisting of twelve layers, the second registration would cover only the new elements added to the first nine layers and any original design material in the three new layers. Registration could not be based on merely trivial variations of the previously registered work. Section 211.4(c) of the Copyright Office regulations provides, in this respect, that: "As a general rule only one registration can be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product."

In drafting § 211.4 of its regulations, the Copyright Office considered whether to specify that, where registration has been made for a claim of protection in a mask work fixed in a final form of a semiconductor chip product, registration could no longer be made for any part of the work fixed in an intermediate form. Since only one registration for a mask work is generally permitted under § 211.4(c), once registration is made for a particular mask work fixed in a final form of a semiconductor chip product, a second registration could not be made for the same version of the work whether fixed in an intermediate or some other final form of the product.

(d) *Bulk Registration.* The Office has been asked to establish a "bulk registration" procedure to cover all registrable parts of cell libraries that were first commercially exploited between July 1, 1983 and the date of enactment of the Semiconductor Chip Protection Act of 1984. The Office does not believe it is authorized to permit the filing of a single application for claims of protection in multiple mask works incorporated in cell libraries first commercially exploited at different times during the transition period. The term of protection would be different for the 1983 and 1984 chips. In any event, group or bulk registrations would tend to confuse the basis of claim and would perhaps allow registration of unoriginal mask works. Registration on a single application and upon payment of a single registration fee can only be made in accordance with new §211.4(d) of the Copyright Office regulations.

(e) *Section 914 Orders.* With respect to the international transitional provisions in section 914 of the Act, the Copyright Office was asked to provide, by regulation, for the submission of applications for registration for interim protection of mask works before the effective date of an Order issued pursuant to that section. There was some concern that, if applications could not be processed before an Order is issued, it might result in a delay before registration could be made even after the Order has issued. It was noted that applicants could encounter special difficulties where an Order protects retroactively mask works first commercially exploited on and after July 1, 1983 and before November 8, 1984 (the date of enactment).

To alleviate any potential problems or delays that foreign applicants may experience when claiming protection under an Order issued pursuant to section 914 of title 17 U.S.C., the Copyright Office has decided to allow such persons to file applications for registration before the effective date of an Order extending protection. The application will be examined to the extent possible and held pending issuance of an Order, provided that a request for such issuance has been filed with the Secretary of Commerce and the Order is issued before July 1, 1985. No certificate of registration will be issued, however, and a registration will not be effective, until the effective date of the relevant Order.

A similar rule would apply where the section 914 Order pertains to mask works first commercially exploited on or after November 8, 1984. The Office will accept and process applications whose eligibility is dependent on issuance of an Order, provided a petition is pending and the Order is later issued no more than two years after the first commercial exploitation of the particular mask work. While the Office recognizes that the Secretary of Commerce has the general discretion to specify an effective date for the Order as early as the date the petition was received, the Office does not believe that Congress intended that discretion to be applied in a way that waives the July 1, 1985 deadline for pre- November 8, 1984 chips, or the two year deadline from first commercial exploitation for all other chips. The nearly 8 month period between November 8, 1984 and July 1, 1985 seems sufficient for foreign claimants to petition the Secretary and for the Secretary to act, if only on a provisional basis, on the petitions. A contrary interpretation would create public uncertainty about which chips are protected and which are in the public domain, insofar as federal protection is concerned.

The status of applications for registration of mask works eligible only pursuant to a section 914 Order and that are pending in the Copyright Office when an Order extending such protection is terminated or allowed to expire, was also questioned. The Copyright Office has concluded that, in such cases, registration may be made provided that an application, deposit, and fee in acceptable form have been received in the Office before termination or expiration of the relevant Order.

(f) *Ownership and Eligiblity.* In one of the unusual features of the Act, section 902(a)(1)(A) provides that a mask work is eligible for protection based on the criterion of ownership of the mask work at the time protection commences (i.e., the date of registration, or the date of first commercial exploitation, which ever occurs first). Persons who are stateless and United States citizens and domiciliaries who are owners are eligible under this provision. Foreign owners may become eligible in their own right, if the country of which the owner is a citizen, domiciliary or sovereign authority is a party to a multilateral or bilateral treaty with the

United States which protects mask works. At present, no such multilateral treaty appears to exist. (In adopting this sui generis law, the United States has taken the position that the Universal Copyright Convention does not require members to protect mask works.) No bilateral agreements have been concluded.

Since ownership can be transferred, however, the question has arisen whether an exclusive licensee of all rights in the United States is an "owner" for purposes of satisfying the eligibility condition of section 902(a)(1)(A). For example, if the initial owner is an ineligible foreigner, will a transfer of "all mask work rights in the United States" to a United States person (either a subsidiary, parent company, or stranger), before first commercial exploitation anywhere make the mask work eligible? Is the conveyance properly characterized as a "transfer" or is it a "license," where only U.S. rights are conveyed? The Act seems to make a distinction between "the owner of a mask work protected under this chapter" and "the exclusive licensee of all rights under this chapter." Section 910(b) uses these phrases in the disjunctive, in providing that either may institute an action for infringement. However, only the "owner of a mask work" may apply for registration of claims to mask work protection. The Senate Memorandum also suggests that the two concepts are different.

The Semiconductor Chip Protection Act seems to follow the patent law concept of indivisibility of ownership and the similar concept of the copyright statute under the Act of 1909 (in effect until December 31, 1977). It appears that there is an owner (including joint owners) of a given mask work, and ownership (as compared to an exclusive license) is conveyed only by a transfer of all mask work rights. If some rights are withheld, even though they would be conforced outside the United States, for example, the conveyance would seem to be a license rather than a transfer of ownership. This analysis does not lead to extraterritorial application of United States law. No foreign court would be required to apply United States law to enforce rights in mask works. As a property right, mask work rights however would seem to be subject to conveyance by contract law, either as existing or contingent rights.

The question is important. The criteria for eligibility allow foreign owners to claim the protection of United States law by first commercial exploitation in this country. Did Congress also intend that, by a conveyance of United States rights alone, mask works created by foreigners would be eligible to claim mask work protection? If the ownership criterion of section 902(a)(1)(A) includes licensees of United States rights, it would be fairly simple for a foreign owner to retain all rights outside the United States, and license a subsidiary, parent, or third party to claim rights in the United States before first commercial exploitation. In some cases, the conveyance might constitute a license of United States rights without further qualifications; in other cases, the conveyance might purport to require a license-back to the original foreign owner.

Congress established a unique transitional procedure in section 914 apparently because it believed the general eligiblity criteria would foreclose registration of most foreign-owned chips. An overbroad interpretation of the general eligibility criteria will largely, if not completely, eliminate the incentive to seek section 914 Orders or bilateral agreements. The United States would in effect offer unilateral protection for mask works with no assurance of protection for United States mask works in foreign countries.

The Copyright Office invites Comment specifically on the meaning of ownership for purposes of section 902 eligibility, since this question was not mentioned in our Notice of Inquiry. As an interim matter, the Copyright Office has concluded that Congress has made a distinction between "owners of mask works" and "exclusive licensees of all rights." The former may claim protection by registration, but the latter cannot. Since a conveyance of "all mask work rights in the United States" seems to be a license rather than a transfer of ownership, the Office concludes that, absent a bilateral or multilateral treaty basis for protection, foreign mask works can be made eligible only by (1) first commercial exploitation in the United States, (2) by issuance of a section 914 Order, or (3) by a transfer from the initial foreign owner of the totality of rights in the mask work to an eligible national or domiciliary. For eligibility purposes, a conveyance of "all mask work rights in the United States" would seem to be a license and not a transfer of ownership in the mask work and therefore, the mask work would not be eligible for registration.

(g) *Supplemental Filings.* At the public hearing there was some consideration given to whether the Copyright Office should establish procedures similar to those established in the case of copyright registrations for the correction or amplification of a record of a completed mask work registration. Section 408(d) of the Copyright Act of 1976 authorized the Register of Copyrights "to establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration."

Since registration in the Copyright Office of a claim of protection in a mask work is a condition of protection under the Semiconductor Chip Protection Act of 1984, and the Act does not require the Office to make provision for supplemental registrations, the Copyright Office concluded that, with the exception of its own errors or omissions, no procedures for supplemental registrations should be established for the correction or amplification of the information contained in the record of a completed registration. This decision is reflected in section 211.4(f) of its regulations. A document purporting to correct or amplify information in a registration record may be recorded in the Copyright Office under section 903 of the Act. The Copyright Office takes no position on the value of any such recordation. Claimants should take care to submit full and correct information in the first application.

4. *Deposit of identifying material.* Section 908(d) of the Act authorizes the Register of Copyrights to "specify the identifying material to be deposited in connection with the claim for registration." Although there is no further guidance in the Act on the nature of the "identifying material," there was some congressional concern expressed that the Copyright Office not require deposit of material that might disclose trade secrets. In an explanatory memorandum inserted in the Congressional Record by the Hon. Robert W. Kastenmeier, the Copyright Office was advised that: "Applicants should not, of course, be required to deposit material that would disclose trade secrets or would facilitate domestic or foreign chip piracy; it is anticipated that the Copyright Office's implementing regulations should reflect this principle to the greatest extent possible, while keeping in mind the necessity of benefitting the public by keeping a public record.[3]

[3] *Explanatory Memorandum of the Senate Amendment to H.R. 6163, as Considered by the House of Representatives.* 130 *Cong. Rec.* E 4432, E 4433 (daily ed. Oct. 10, 1984); *See also Explanatory Memorandum—Mathias-Leahy Amendment to S. 1201,* 130 *Cong. Rec.* S 12916, S 12918 (daily ed. Oct. 3, 1984).

At the public hearing on October 18, 1984, consideration was given to the purpose of requiring identifying material. It was asked whether the material would be useful in an infringement action: (1) To show clearly the basis of a mask work claim at the time of registration; or (2) merely to indicate that something existed. There was general agreement that the first purpose was acceptable as long as it did not create serious business problems. The representatives of the Semiconductor Industry Association (SIA) thought the deposited material should disclose the mask work on the date of registration and not what an applicant might allege at a later point, perhaps after the changing his or her mind about the nature of the claim.

SIA in its oral testimony and written comments recommended that the Copyright Office allow the submission of any of the following identifying material for deposit purposes:

(1) Sets of approximately 8½ × 11 inch plastic overlay sheets (typically made of acetate material), or photocopies thereof;

(2) drawings of a mask work fixed in a semiconductor chip product, either in composite form on a single sheet or on separate sheets, plotted on about 8½ × 11 inch [Mylar] plastic sheets of approximately 20 to 30 times the actual size of a chip or die;

(3) a photograph of the chip, magnified to about 20 to 30 times actual size;

(4) a printout of the design/layout data, together with a few selected overlays; or

(5) a reproduction of the mask work fixed in a semiconductor chip product, *i.e.*, the chip or die itself.

SIA urged the Copyright Office to be flexible in its deposit requirements since, in its opinion, "there is no uniform or standard process within the semiconductor industry for preparing mask works or for manufacturing chips based upon the prepared mask works." SIA noted that, absent uniformity, "alternatives for identifying material must be available."

SIA and other commentators thought that any identifying material deposited should clearly identify the mask work for which protection was claimed, while not divulging any trade secret or other sensitive information. To accomplish this task, SIA asked the Copyright Office to establish optional deposit requirements. It suggested two specific options: (1) *Incomplete mask work descriptions*—this would be accomplished "by leaving out the description of entire layers, such as the ion implant layers, or by 'blocking out' (similar to the approach used for source code) the sensitive material by submitting, for example, only 'stripes' from each layer;" and (2) *secured deposits*—except for identifying material, such a deposit would not be left with the Copyright Office and would not generally be accessible to the public for inspection.

Although in its Notice of Inquiry the Copyright Office concurred in the view expressed in a report of the Senate Committee on the Judiciary that "deposit of chips in the Library of Congress would serve no useful purpose" (i.e., no useful library purpose), S. Rep. No. 98-425, 98th Cong., 2d Sess. 19 (1984), it became apparent during the public hearing that the chip or die itself was the best reproduction of the mask work to require for deposit purposes in the Copyright Office. In comments submitted following the hearing SIA cautioned, however, that, if the chip or die were the only deposit permitted, it might preclude a manufacturer from registering prior to commercial exploitation. Captive manufacturers were particularly concerned that a chip or die "might include such valuable information and be so expensive that public deposit even after commercial exploitation would be unadvisable."

After reviewing the comments and testimony received in this regulatory proceeding, the Congressional Record and the Act itself, the Copyright Office concluded that its deposit requirements under section 908(d) of the Semiconductor Chip Protection Act of 1984, Pub.L. 98-620, should generally allow for optional deposit of identifying material in order to preserve trade secrets and other sensitive information, provided that the public record (archival) purpose and examining needs are also satisfied. The Office divided its regulations into two general categories depending on whether a mask work fixed in a semiconductor chip product was commercially exploited.

For all commercially exploited mask works, the Copyright Office requires, in new § 211.5(b) of its regulations, the deposit of "four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited." The Office decided to require *four* chips or dies, since it understood that, in the context of an action for infringement, a chip may be dissected for evidentiary purposes, and thereby destroyed. Where a chip is furnished to a court in the first instance, three additonal reproductions of the mask work would remain in the files of the Copyright Office to be used in the event of other infringement actions involving the same work. Since Copyright Office examiners will not be able to examine facially the deposited chips or dies, however, the Office provides in § 211.5(b)(1) that the four reproductions of the mask work be accompanied by visually perceptible representations of the mask work consisting of sets comprising all layers of the mask work in the form of either plastic overlays, composite plots, or photographs. To minimize the risk of divulging trade secrets, the Office allows applicants to withhold one of two layers of the "visually perceptible representation" containing sensitive material, and permits the deposited material for the remaining layers to be produced at 20 to 30 times magnification of the actual size of the mask work. Apparently, at that magnification, the danger of divulging trade secrets is reduced, but not eliminated. Finally, where one or two layers are withheld under claim of trade secrecy, the applicant shall in addition deposit "identifying portions" of the affected layers, consisting of a printout of the mask work design data pertaining to each withheld layer, reproduced in microform; the sensitive material may be blocked out or stripped from the deposited material.

In the case of mask works that have not been commercially exploited, the Copyright Office does not require the deposit of the chip or die. For the interim, the Office has accommodated the need expressed by SIA and other representatives of the semiconductor industry to all alternative deposits to preserve trade secrets and to reduce any expense involved in complying with the deposit requirements. In § 211.5(b)(2) of its regulations, the Copyright Office generally requires the deposit of a visually perceptible representation of a mask work that has not been commercially exploited, consisting of either sets of plastic color overlay sheets or composite plots of each layer. Where an applicant wishes to withhold overlays or plots relating to certain layers of a chip in which trade secret protection is asserted, including all layers in some cases, the interim regulations allow the withholding of this material; however, an applicant must submit specific identifying portions (as discussed above) in lieu of the layers of the mask work.

Since the Register of Copyrights anticipates that applicants may be faced initially with unique difficulties in complying with the deposit requirements in § 211.5 of the regulations, the Register decided to establish a procedure for special relief. The request should state reasons for a favorable response and

should propose alternative deposit material. Eventually, it may be necessary to set a fee for this service; however, until more experience is developed in administering the deposit regulations, requests for special relief will be processed free of charge. There will also be no charge, at this time, for the retention of deposited material in accordance with § 211.5(e)(2) of the regulations.

The Office in these interim regulations has accommodated industry concerns about unnecessary public disclosure of trade secrecy. We view these regulations as experimental and will closely monitor the experience under the Act to assure that sufficient disclosure of the mask work is made on the public record. If necessary, additional disclosure requirements will be imposed.

5. *Mask work notice.* (a) *Affixation and Location.* Section 909(a) of title 17 U.S.C. authorizes the Register of Copyrights to prescribe, by regulation, "specific methods of affixation and placement of notice" for purposes of that section. It is provided, however, that "these specifications shall not be considered exhaustive." Unlike the copyright law, the mask work notice is not a condition of protection, but constitutes "prima facie evidence of notice of protection."

In its Notice of Inquiry, the Copyright Office asked whether the general standard applied to the copyright notice in § 201.20(c)(1) of 37 CFR should also be applied to the mask work notice.[4] It noted that, in applying this standard to mask works, the acceptability of a notice would vary depending upon the nature of the material object in which the work was fixed. Although a mask work must be fixed in a semiconductor chip product to secure protection under section 902(a) of the Act, the work might later be infringed in a different form.

SIA urged the Copyright Office to specify, by regulation, methods of affixation and placement of the mask notice on semiconductor chip products; the requirements could later be expanded to include other forms such as magnetic tapes or disks. They asked the Office not to make any special provision for the situation where a notice is placed on either the container for a chip or the chip itself, and the work is later inserted in the ignition of an automobile or some other product. There was concern that, if the words "concealed from view" in the general copyright standard were applied to a mask work notice in such a case, the notice would not be acceptable.

In setting a general standard of acceptability for a mask work notice in § 211.6(a) of its regulations, the Copyright Office requires generally that a mask work notice be legible under normal conditions of use, and "affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination." No reference is made to "ordinary user" or "concealed from view." The Office agreed with SIA that this language should not apply in the case of a mask work notice.

The Copyright Office decided to follow the recommendations of SIA on the acceptable locations for the affixation and placement of a mask work notice fixed in a semiconductor chip product. Although it may become necessary to prescribe methods of affixation and placement of a notice where mask works are fixed in other forms, the Office did not think such a provision was required at this time.

(b) *Combined Copyright and Mask Work Notice.* SIA asked that the Copyright Office by regulation specifically authorize use of a combined copyright and mask work form of notice on semiconductor chip products in the case where one entity is the mask work owner and the owner of copyright in copyrightable subject matter embodied in a chip product.

The Copyright Office declines to adopt this suggestion because of concerns about possible confusion between copyright and mask work protection and doubts about the number of instances in which both claims can properly be made by one entity in different aspects of a semiconductor chip product. Of course, the Copyright Office does not have the authority to prohibit use of a combined notice, if the claimant believes such a notice satisfies the separate requirements of the Copyright Act and the Semiconductor Chip Protection Act.

(c) *Form of Notice.* This regulation is issued before the official public law print of the Semiconductor Chip Protection Act is available. In specifying the form of the mask work notice, the Office has followed the form of the notice in H.R. 6163 as it was passed by the House of Representatives on October 9, 1984.

6. *Recordation.* Section 903(c) provides that "[a]ny document pertaining to a mask work may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document." Since this language tracks the language of the comparable provision in the Copyright Act, the Office in these regulations has simply provided that the existing copyright regulation, 37 CFR 201.4, shall also apply, as appropriate, to recordation of mask work documents.

As a preliminary matter, the Office believes that documents pertaining to mask works should be recorded even if executed before registration or first commercial exploitation. The document would cover any inchoate or contingent rights. The Office is not inclined however to record documents relating to mask works commercially exploited before July 1, 1983, since no inchoate or contingent mask work rights would seem to exist. We have not however issued specific regulations, and invite public comment on both points.

7. *Publication of registrations and other actions taken by the Copyright Office.* Most commentators urged the Copyright Office not to reproduce and publish the complete record of a registration, including any forms and identifying material. It was felt that the costs involved were not justified.

In light of the comments received, and its own experience in administering the copyright law, the Copyright Office decided generally to handle any information or materials submitted under the Semiconductor Chip Protection Act of 1984 in the same way it processes copyright information and deposits. It concluded that a new regulation specifying different procedures for mask works was not required.

8. *Interim Effect and Regulatory Flexibility Act Statement.* These regulations are issued on an emergency basis and given interim effect since the 60-day period between enactment and implementation of the registration-recordation provisions has not been sufficient to give notice of a hearing, conduct a hearing, evaluate the comments, and issue proposed regulations with a 30-day comment period and subsequent evaluation of the comments. The Office does invite public comments before the regulations are made final.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the

[4] Section 201.20(c)(1) provides that "the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination." 37 CFR 201.20(c)(1) (1984).

Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[5]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this interim regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Interim Regulations

In consideration of the foregoing, Chapter II of 37 CFR is amended in the manner set forth below.

PARTS 205–210—[RESERVED]

1. Parts 205–210 are reserved.

2. A new Part 211 is added to 37 CFR Ch. II as follows:

PART 211—MASK WORK PROTECTION

Sec.
211.1 General provisions.
211.2 Recordation documents pertaining to mask works.
211.3 Mask work fees.
211.4 Registration of claims of protection in mask works.
211.5 Deposit of identifying material.
211.6 Methods of affixation and placement of mask work notice.

Authority: 17 U.S.C.–702; 908.

§ 211.1 General provisions.

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620, chapter 9 of Title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, D.C. 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and Parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and the Privacy Act, shall apply, where appropriate, to the administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620.

(c) For purposes of this part, the terms "semiconductor chip product," "mask work," "fixed," "commercially exploited," and "owner," shall have the meanings set forth in section 901 of Title 17 U.S.C.

§ 211.2 Recordation of documents pertaining to mask works.

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of Title 17 U.S.C.

§ 211.3 Mask work fees.

(a) The following fees or charges are established by the Register of Copyrights for services relating to mask works:

(a) For filing an application for registration of a mask work claim	$20.00
(b) For recordation of a document consisting of six pages or less covering no more than one title	$10.00
(c) For recordation of each page over six and each title over one	$.50
(d) For a certified copy of a certificate of registration	$4.00
(e) For certifications of photocopies of other Copyright Office records	$4.00
(f) For the issuance of a receipt of a deposit	$2.00
(g) For each hour or fraction of an hour consumed in the making and reporting of a routine search, and for any related services	$10.00
(h) For special handling of an application for registration of a claim	$200.00
(i) For any special services not listed above requiring a substantial amount of time or expense, the fees will be fixed on the basis of the cost of providing the service	

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

§ 211.4 Registration of claims of protection in mask works.

(a) *General.* This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of Title 17 U.S.C.

(b) *Application for registration.* (1) For purposes of registration of mask work claims, the Register of Copyrights has designated "Form MW" to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Public Information Office, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559. Applications submitted before January 7, 1985 will be held and dated January 7, 1985.

(2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.

(i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.

(ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work.

(3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regulations. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and (ii) the handwritten signature of the applicant, accompanied by the typed or printed name of that person.

(c) *One registration per mask work.* As a general rule only one registration can be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(d) *Registration as a single work.* For purposes of registration on a single application and upon payment of a single registration fee, the following shall be considered a single mask work:

(1) In the case of a mask work that has not been commercially exploited: all elements of the mask work fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the

[5] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(b), of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 709(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

owner or owners of the mask work is the same; and

(2) In the case of a mask work that has been commercially exploited: All elements of the mask work fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask work is the same.

(e) *Fixation in intermediate form.* (1) In the case of a mask work fixed in an intermediate form of a semiconductor chip product, registration may be considered provided the applicant avers at Space 2 of Form MW:

(i) That fixation has occurred solely in the intermediate form; and

(ii) That the intermediate form represents twenty per cent or more of the intended final form of the semiconductor chip product.

(2) Registration will be refused for the mask work as fixed in an intermediate form if fixation in a final form of a semiconductor chip product has occurred before registration is sought, or if the intermediate form comprises less than twenty per cent of the intended final form of the semiconductor chip product.

(f) *Section 914 Orders.* (1) For purposes of this section, the terms "Commissioner" and "Order" shall have the meaning given them in the *Guidelines for the Submission of Applications for Interim Protection of Mask Works under 17 U.S.C. 914* (49 F.R. 44517; Nov. 7, 1984).

(2) In the case of a mask work which is eligible for registration only after issuance of an Order of the Commissioner pursuant to section 914, 17 U.S.C., applications for registration under section 908 may be submitted, along with the proper identifying material and fee, if a request for issuance of an Order has been made in accordance with the *Guidelines*. The Copyright Office will process and examine the claims, but will not issue a certificate of registration unless and until an Order is issued pursuant to 17 U.S.C. 914.

(3) The effective date of any registration premised on a section 914, 17 U.S.C. Order shall not be earlier than the effective date of the Order.

(4) Registration premised on a section 914, 17 U.S.C. Order will be refused unless a proper application, deposit of identifying material, and fee are received in the Copyright Office and the Order is issued before:

(i) July 1, 1985, in the case of mask works first commercially exploited between July 1, 1983 and November 8, 1984; or

(ii) the expiration of two years following first commercial exploitation, in the case of a mask work first commercially exploited on or after November 8, 1984.

(5) Subject to paragraph (e)(4) of this section, registration of a claim premised on a section 914, 17 U.S.C. Order will be made even after the termination or expiration of an Order, provided that a proper application, deposit of identifying material, and fee are received in the Copyright Office while the Order is in effect, and the claim is otherwise entitled to registration under chapter 9 of Title 17 U.S.C.

(g) *Corrections amplifications of prior registration.* Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration record may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the mask work, as identified in the registration record, or by a duly authorized agent of the owner.

§ 211.5 Deposit of identifying material.

(a) *General.* This section prescribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of Title 17 U.S.C.

(b) *Nature of required deposit.* Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under §211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of: (i) Sets of plastic color overlay sheets; (ii) drawings or plots in composite form on a single sheet or on separate sheets; or (iii) a photograph of each layer of the work fixed in a semiconductor chip product. The visually perceptible representation of a mask work deposited under this section shall, to the extent possible, be reproduced on material that is 8½ x 11 inches in size, and shall be produced at 20 to 30 times magnification of the actual size of the work;

(2) In the case of a mask work that has not been commercially exploited, a visually perceptible representation of the work in accordance with paragraph (b)(1) (i) or (ii) of this section.

(c) *Trade secret protection.* Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows: (i) For commercially exploited mask works, no more than two layers of a five or more layer mask work; (ii) for mask works not commercially exploited, any layer. In lieu of the visually perceptible representations required under paragraph (b) (1) and (2) of this section, identifying portions of the withheld material must be submitted. For these purposes, "identifying portions" shall mean a printout of the mask work design data pertaining to each withheld layer, reproduced in microform. In the case of a mask work that has not been commerically exploited, the identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product. Sensitive information maintained under a claim of trade secrecy may be blocked out or stripped from the identifying portions.

(d) *Special relief.* The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted. Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division of the Copyright Office, Washington, D.C. 20559, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) *Retention and disposition of deposits.* (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.

(2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyright and the Librarian of Congress to order its destruction or other disposition.

§ 211.6 Methods of affixation and placement of mask work notice.

(a) *General.* (1) This section specifies methods of affixation and placement of

the mask work notice that will satisfy the notice requirement in section 909 of Title 17 U.S.C. A notice deemed "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be affixed "in such manner and location as to give reasonable notice" of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.

(2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.

(b) *Elements of mask work notice.* The elements of a mask work notice shall consist of:

(1) The words "mask work", the symbol "* M *," or the symbol " M " (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(c) *Methods of affixation and placement of the notice.* In the case of a mask work fixed in a semiconductor chip product, the following locations are acceptable:

(1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle of the product; or

(2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

(17 U.S.C. 702; 908)

Dated: December 27, 1984.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-118 Filed 1-2-85; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[SWN-FRL-2748-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: EPA plans to hold two public meetings to explain the recent changes to the delisting program as a result of the Hazardous and Solid Waste Amendments of 1984. The amendments require, among other things, the Agency to make substantial changes to its procedures for handling petitions to exclude hazardous waste from regulatory control. The Agency is conducting these meetings to provide detailed guidance to petitioners on how the amendments will affect their petitions and instruction on the preparation of supplemental material which should be included in the petitions. The amendments set out a timetable for processing petitions for which temporary exclusions have been granted; the Agency believes that these meetings will provide the guidance necessary to enable petitioners to supply any information required as quickly as possible.

DATES: The meetings are scheduled as follows:

1. February 5, 1985, 9:30 a.m. to 4:00 p.m., Washington, D.C.
2. February 7, 1985, 9:30 a.m. to 4:00 p.m., Dallas, Texas.

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

1. Department of Health and Human Services, Main Auditorium (1st floor), 330 Independence Avenue, SW, Washington, D.C.
2. Hyatt Regency Dallas, 300 Reunion Boulevard, Dallas, Texas 75207, (214) 651-1234.

A block of rooms have been reserved at the Hyatt Regency Dallas for persons attending the meeting. When making reservations please indicate that you will be attending the EPA public meeting.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000. For technical information contact Mr. James Poppiti, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4665.

Dated: December 27, 1984.

Jack McGraw,

Acting, Assistant Administrator.

[FR Doc. 85-85 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[Docket No. 20735; RM-1301; RM-1974; RM-2655]

Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: These corrections to the *Third Report and Order* in the rules relating to noncommercial, educational FM broadcast stations are necessary because the original printing contained erroneous information.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of changes in the rules relating to Noncommercial, Educational FM Broadcast Stations, Docket No. 20735, RM-1301, RM-1974, RM-2655.

Released: December 18, 1984.

The *Third Report and Order* in the above entitled proceeding (FCC 84-515, Mimeo 35131) adopted October 26, 1984, released November 6, 1984 (49 FR 45146 published on November 15, 1984) is corrected to change as follows:

PART 73—[AMENDED]

§ 73.511 [Amended]

1. In 47 CFR 73.511, paragraph (b), the reference is changed from "§ 73.211(b)(2)" to "§ 73.211(b)(1)"

§ 73.525 [Amended]

2. In 47 CFR 73.525, Table A in paragraph (b), the effective radiated power (dBk) for Educational FM Channel 202 should change from "3.7" to "2.7"

3. In 47 CFR 73.525, Table B in paragraph (c)(3), the permitted ERP, [Recommended Level, Channels 201-220] for a TV field strength of 20.0 dBu should change from "47.0" to "48.0"

4. In 47 CFR 73.525, paragraph (d), change the phrase "300 meters" to "150 meters."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-74 Filed 1-2-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

[Defense Acquisition Circular 84-9]

Department of Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Temporary rule and request for comment.

SUMMARY: Defense Acquisition Circular (DAC) 84-9 revises Subpart 246.7 of the DoD FAR Supplement (DFARS) to incorporate changes required by the Defense Procurement Reform Act with regard to warranties in weapon system procurement.

EFFECTIVE DATE: January 2, 1985. Comments must be received on or before March 4, 1985. Please cite DAR Case 84-10 in all correspondence to this issue.

ADDRESS: Interested parties should submit comments to: Defense Acquisition Regulatory Council, Room 3D139, Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION: The Defense Procurement Reform Act (Pub. L. 98-525) adds a new Section 2403 to Title 10 of the United States Code, which among other things, requires that DoD obtain certain types of warranties in contracts awarded on or after Janugry 1, 1985, for the acquisition of weapon systems. DAC 84-9 contains changes to the Defense Federal Acquisition Regulation System (DFARS) to implement the requirements of the new 10 U.S.C. 2403.

Because of the complex and extensive nature of the revisions required by 10 U.S.C. 2403, DAC 84-9 provides a completely new Subpart 246.7 of the DFARS which requires that each weapon system contract contain three specific warranties, one covering design and manufacturing requirements, one covering defects in materials and workmanship, and one covering essential performance requirements delineated in the contract. The new coverage also provides policies and procedures for tailoring the required warranties to the circumstances of a particular procurement, as well as mechanisms for obtaining waivers from the new requirements when properly justified, approved, and reported to Congress. Other significant topics addressed in the revised Subpart 246.7 include establishing essential performance requirements, applying the new warranties to foreign military sales, and analyzing the costs and benefits associated with obtaining warranties in specific situations.

It should be noted that the terms "guarantee" and "warranty," and all forms thereof have been used interchangeably in 10 U.S.C. 2403 and past legislation concerning warranties. For the sake of simplicity and consistency with the FAR, the revised subpart 246.7 of the DFARS uses the terms "warranty and warranties" exclusively. The Defense Acquisition Regulatory Council recognized the critical importance of tailoring new warranty provisions to the circumstances of widely differing acquisition programs and strategies within DoD. While the coverage contained in DAC 84-9 provides general guidance on tailoring, the Council is considering whether more detailed instructions, a sample warranties clause(s), or some other framework for structuring provisions for individual contracts may be useful. However, the statutory deadline for implementing 10 U.S.C. 2403 precluded developing this type of additional coverage. The council, therefore, is issuing DAC 84-9 in its present form, but solicits views and suggestions regarding adequate regulatory guidance that will allow appropriate tailoring of warranties.

A determination has been made under the authority of the Secretary of Defense that DAC 84-9 must be issued as a temporary regulation. Because 10 U.S.C. 2403 applies to all contracts for weapon systems entered into after January 1, 1985, circumstances make it impracticable to publicize the necessary implementing regulations for advance public comment. As noted above, however, public comments are solicited and may be submitted to the DAR Council until March 4, 1985.

List of Subjects in 48 CFR Ch. 2

Government procurement.

Authority: 10 U.S.C. 2403.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 28, 1984.

DAC Introductory Item, DAC 84-9

Item I. The Defense Procurement Reform Act adds a new Section 2403 to Title 10 of the United States Code which among other things, requires that DoD obtain certain types of warranties in contracts awarded on or after January 1, 1985, for the acquisition of weapon systems. DAC 84-9 contains changes to the DFARS to implement the requirements of the new 10 U.S.C. 2403.

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and may be submitted to the DAR Council until March 4, 1985.

48 CFR Chapter 2 is amended as follows:

PART 246—QUALITY ASSURANCE

Subpart 246.7, consisting of sections 246.701 through 246.770–10, is revised to read as follows:

Subpart 246.7—Warranties

246.701 Definitions.

"Acceptance," as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services; means the execution of an official document (e.g., DD Form 250) by an authorized representative of the Government. The above clauses shall be modified accordingly in DoD contracts.

"Defect," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(d) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item.

(e) The acquisition cost of a warranty may be included as part of an item's price or may be set forth as a separate contract line item.

(f) Agencies shall establish procedures to track and accumulate data relative to warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the procurement of weapon systems is mandatory pursuant to 10 U.S.C. 2403, unless a waiver is authorized. Policy and procedures for obtaining such warranties or waviers are contained in 246.770. Acquisition of warranties in the procurement of supplies that do not meet the definition of a weapon system (e.g., spare, repair or replenishment parts) is governed by FAR 46.7. However, should the Government elect to obtain a warranty for such supplies, contracting officers should negotiate warranties that meet or exceed the requirements of 246.770 where such warranties are advantageous and in accordance with Departmental policy.

246.704 Authority for use of warranties.

In contracts for other than weapon systems, the Chief of the Purchasing Office must approve use of a warranty except for:

(a) Commercial supplies or services (see FAR 46.709);

(b) Technical data, unless the warranty provides for extended liability (see 246.708);

(c) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; and

(d) Supplies and services in construction contracts when the warranties contained in federal, military or construction guide specifications applicable to a given construction project are used.

Authority for use of warranties in the procurement of weapon systems is stated in 246.770.

246.705 Limitations.

(a) Except for contracts for the production of weapon systems under 246.770, contracting officers shall not include warranties in cost reimbursement contracts, except for those warranties contained in the clauses at FAR 52.246–3, Inspection of Supplies—Cost Reimbursement; FAR 52.246–8, Inspection of Research and Development—Cost Reimbursement; and at 252.246–7001, Warranty of Technical Data.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* If items delivered under the contract shall be stamped or marked, it shall be done so in accordance with MIL Standard 129, "Marking for Shipments and Storage" and MIL Standard 130, "Identification Marking of U.S. Military Property."

246.708 Warranties of technical data.

A warranty of technical data should be obtained whenever practicable and cost effective. The contracting officer shall consider the factors contained in FAR 46.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 246.770–10). Particular emphasis should be placed on whether the extended liability is justified by (i) the likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government, and (ii) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.770 Use of warranties in weapon system procurements.

This section sets forth policy and procedures for obtaining, pursuant to 10 U.S.C. 2403, certain warranties from prime contractors when contracting for the production of a weapon system.

246.770–1 Definitions.

"At no additional cost to the United States," as used in this section, means at no increase in price for firm fixed price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707) or at no increase in estimated cost or fee for cost reimbursement contracts.

"Design and manufacturing requirements," as used in this section, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

"Essential performance requirements," as used in this section, means the operating capabilities and maintenance and reliability characteristics of a weapon system that are determined by the Secretary of Defense (or delegated authority) to be necessary for it to fulfill the military requirement for which the system is designed.

"Initial production quantity," as used in this section, means the number of units of a weapon system contracted for in the first program year of full-scale production.

"Mature full-scale production," as used in this section, means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

"Prime Contractor," as used in this section means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

"Weapon system," as used in this subpart, means a system or major subsystem used directly by the armed forces to carry out combat missions. By way of illustration, the term "weapon system" includes, but is not limited to the following, if intended for use in carrying out combat missions: Tracked and wheeled combat vehicles; self-propelled, towed and fixed guns, howitzers and mortars; helicopters; naval vessels; bomber, fighter, reconnaissance and electronic warfare aircraft; strategic and tactical missiles including launching systems; guided munitions; military surveillance, command, control, and communication systems; military cargo vehicles and

aircraft; mines; torpedoes; fire control systems; propulsion systems; electronic warfare systems; and safety and survival systems. This term does not include related support equipment, such as ground handling equipment, training devices and accessories thereto; or ammunition, unless an effective warranty for the weapon system would require inclusion of such items. This terms does not include commercial items sold in substantial quantities to the general public as described at FAR 15.804–3(c).

246.770–2 Policy.

(a) Unless waived under 246.770–9, after 1 January 1985, the Military Departments and Defense Agencies may not enter into a contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or for which the eventual total procurement cost is in excess of $10,000,000, unless—

(1) A prime contractor for the weapon system provides the United States with written warranties that—

(i) The weapon systems provided under the contract conform to the design and manufacturing requirements specifically delineated in the contract (or any modification to that contract).

(ii) The weapon systems provided under the contract are free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon systems, if manufactured in mature full-scale production, conform to the essential performance requirements as specifically delineated in the contract (or any modification to that contract).

(2) The contract terms provide that, in the event that the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take such corrective action as necessary at no additional cost to the United States,

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(iii) Equitably reduce the contract price.

(b) Contracting Officers may require warranties that provide greater coverage and remedies than specified above, such as including an essential performance requirements warranty in other than a mature full-scale production contract.

246.770–3 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among weapon system acquisition programs, Contracting Officers shall appropriately tailor the required warranties on a case by case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section. (See also FAR 46.706). Contracting officers may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk of other program uncertainties. Contracting Officers are encouraged to structure broader and more comprehensive warranties where such are advantageous and in accordance with agency policy. Likewise, the Contracting Officer may narrow the scope of a warranty where such is appropriate (e.g., where it would be inequitable to require a warranty of all essential performance requirements because a contractor had not designed the system). It is Department of Defense policy not to include in warranty clauses any terms that cover contractor liability for loss, damage or injury to third parties.

246.770–4 Establishing essential performance requirements.

The Secretary of Defense or heads of military departments, or delegees, shall designate which features of a weapon system are its essential performance requirements. Essential performance requirements may be subsequently modified, superceded or cancelled by the Secretary of Defense or heads of military departments (or delegees) when such is in the interests of the Government.

246.770–5 Warranties on government furnished property.

A prime contractor shall not be required to provide the warranties specified in 246.770–2 on any property furnished to that contractor by the United States except for (a) defects in installation, (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property, or (c) modifications made to the property by the prime contractor.

246.770–6 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(3) until that contractor manufactures the first 10% of the eventual total production quantity anticipated to be acquired from that contractor.

246.770–7 Applicability to FMS.

The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. It is the policy of the Department of Defense to obtain for FMS purchasers the same warranties against defects in workmanship and material and conformance to design and manufacturing requirements as is obtained by the United States for similar purposes. DOD will not normally obtain essential performance warranties for FMS purchasers. The FMS purchaser shall be advised of the warranties normally obtained by the United States. If the FMS purchaser requests a warranty in the Letter of Offer and Acceptance (LOA), the United States shall obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship that are obtained for U.S. supplies. If the FMS purchaser expressly requests a performance warranty, the United States will exert its best efforts to obtain the same warranty obtained on U.S. equipment or, if specifically requested by the FMS purchaser, a unique warranty. It is anticipated that the costs for warranties for FMS purchasers may be different than the costs for such warranties for the United States due to such factors as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser. Special care must be exercised to ensure that the FMS purchaser shall bear all of the acquisition and administration costs of any warranties obtained.

246.770–8 Cost-benefit analysis.

It is Department of Defense policy to only obtain warranties that are cost effective. If a specific warranty is considered not to be cost effective by the contracting officer, a waiver request shall be initated under 246.770–9. In order to determine whether use of a warranty would be cost effective, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine a weapon system's life cycle costs, both with and without a warranty. Where possible, a comparision should be made with the costs of obtaining and enforcing similar warranties on similar systems. The

analysis should be documented in the contract file.

246.770-9 Waiver and notification procedures.

One or more of the weapon system warranties requirer by 246.770-2 may be waived if such waiver is in the interests of national defense or if the warranty obtained would not be cost effective. Waivers may be granted by the Secretary of Defense, by the Under Secretary of Defense (Research and Engineering) for Defense agencies without the power to redelegate, or by the Secretaries of the Army, Navy and Air Force with the power to redelegate to no lower than an Assistant Secretary of the Military Department. Class waivers may be granted where justified. Waivers may be granted provided the following notifications or reports are made to the Senate and House Committees on Armed Services and on Appropriations—

(a) *Major weapon systems.* With respect to a weapon system that is a major defense acquisition program for the purpose of 10 U.S.C. 139a, before granting a waiver, the waiving official shall notify the aforementioned Committees in writing of an intention to waive one or more of the required warranties. The notice of intent to waive shall include an explanation of the reasons for the waiver and shall ordinarily be given 30 days prior to granting such waiver.

(b) *Other weapon systems.* With respect to weapon systems that are not major defense acquisition programs for the purpose of 10 U.S.C. 139 a, waiving officials shall submit an annual report not later than 1 February of each year that lists waivers granted on such programs during the preceding calendar year. This report shall also include an explanation of the reasons for granting each waiver.

(c) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials shall nonetheless comply with the notice requirements for major weapon systems.

(d) *Processing waivers, notifications and reports.* Each Department shall issue procedures for processing waivers, notifications, and reports to Congress. At the minimun, these procedures shall specify—

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program; and

(ii) The specific waiver requested, the duration of the waiver if it is to go beyond the instant contract and rationale for the waiver;

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production, and

(ii) Rational for not obtaining a warranty.

(3) A written record will be kept of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

(4) A copy of each notification and report to Congress shall be submitted concurrently to the Under Secretary of Defense (Research and Engineering). For class waivers this copy shall be submitted in advance of transmittal to Congress.

246.770-10 Special contract clauses.

(a) In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts when a fixed-priced or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246-3, Inspection of Supplies—Cost Reimbursement; FAR 52-246-6, Inspection—Time-and-Material and Labor Hour; FAR 52.246-8, Inspection of Research and Development—Cost. Reimbursement; and FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

(1) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate I.

(2) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate II.

(b) In accordance with 246.770, the contracting office shall insert in solicitations and contracts pertaining to the production of weapon systems a clause that describes the contractor's warranties on the weapon system.

[FR Doc. 85-72 Filed 1-2-85; 8:45am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-200]

Organization and Delegation of Powers and Duties; Tandem Truck and Motor Carrier Safety Acts of 1984

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Highway Administrator (FHWA) functions vested in the Secretary by the Tandem Truck and Motor Carrier Safety Acts of 1984, which relate to matters already entrusted to FHWA.

DATE: The effective date of this amendment is October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC (202) 426-4710.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

The Tandem Truck Safety Act of 1984 is Title I of Pub. L. 98-554; it provides a mechanism whereby State Governors can petition the Secretary of Transportation to exempt segments of the Interstate Highway System from the increased commercial vehicle length and width requirements imposed by the Surface Transportation Assistance Act of 1982. Since FHWA already administers those provisions of the 1982 Act, this authority is also delegated to FHWA.

The Motor Carrier Safety Act of 1984 is Title II of Pub. Law 98-554; it provides the Secretary with new motor carrier safety regulatory authority. Since existing motor carrier safety regulatory authority in DOT is carried out by FHWA, this new authority is also being delegated to FHWA. Excepted is the authority in Section 209, relating to the Commercial Motor Vehicle Safety Regulatory Review Panel; under standard DOT practice, advisory committee issues are handled under a system separate from these delegations.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

PART 1—(AMENDED)

In consideration of the foregoing, § 1.48 of Part 1 of Title 49, Code of Federal Regulations, is amended by inserting at the end thereof a new paragraph (aa), to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(aa) Carry out the functions vested in the Secretary by the Tandem Truck and Motor Carrier Safety Acts of 1984 (Pub. L. 98-554), except Section 209.

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on December 21, 1984.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-119 Filed 1-2-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Review of Regulations Concerning the Taking of Sea Turtles for Subsistence Purposes

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

ACTION: Notice of final determination and availability of review document.

SUMMARY: On April 20, 1983 (48 FR 16925), the NMFS announced its intention to review Special Rule 50 CFR Part 227 Subpart D to determine whether the subsistence regulations for the Trust Territory of the Pacific Islands (TTPI) should be modified and whether the taking of sea turtles for subsistence purposes should be allowed in other areas of the central and western Pacific. During that review, the NMFS considered public comments on the need for subsistence exceptions in the central and western Pacific, the criteria that must be satisfied before a subsistence take could be authorized, information concerning the dependence of cultural groups in the central and western Pacific on the taking of sea turtles, and the status of sea turtle stocks. The NMFS determined that there are no native cultures outside of the TTPI that are dependent on the taking of sea turtles and that there is no justification for authorizing a subsistence take elsewhere in the Pacific. The NMFS determined that during the rule-making process resulting in the listing and the subsistence exception, the information provided by the TTPI for specific areas in the TTPI was inappropriately assigned to the whole of the TTPI. This created an inequitable situation in the Mariana Archipelago with the Commonwealth of the Northern Mariana Islands (CNMI) being allowed a subsistence take and Guam not. The NMFS determined that there is no justification for a subsistence exception in the Mariana Archipelago and proposes to resolve the current inequity by allowing the subsistence exception to dissolve with the pending dissolution of the Trust under which the TTPI is administered.

The purpose of this notice is to announce the NMFS's determination to retain the existing sea turtle regulations without modification and to announce the availability of the document on which that determination is based.

ADDRESSES: For copies of the review document (Titled: A Review of Subsistence Uses of Sea Turtles in the Central and Western Pacific with Respect to Federal Regulations Authorizing a Subsistence Take of Green Sea Turtles in the Trust Territory of the Pacific Islands) contact: James H. Lecky, Protected Species Program Coordinator, National Marine Fisheries Service/Southwest Region, 300 S. Ferry Street, Room 2001, Terminal Island, CA 90731 (telephone (213) 548-2518).

FOR FURTHER INFORMATION CONTACT: James H. Lecky, (213) 548-2518.

SUPPLEMENTARY INFORMATION:

Background

Currently sea turtle regulations (50 CFR 227.72(f)) authorize a subsistence take of green sea turtles in the TTPI. In late 1981, the State of Hawaii requested the NMFS to consider authorizing a take of green sea turtles for home consumption. Also, an individual Hawaiian, speaking on behalf of native Hawaiians, has requested the NMFS to recognize native Hawaiians' aboriginal rights to take turtles. In 1982, Guam voiced its opinion that NMFS's regulations were inconsistent and inequitable in the Mariana Archipelago. Guam and the CNMI comprise the Mariana Archipelago. The CNMI is allowed to participate in the subsistence exception because they are a part of the TTPI. Guam is excluded from the subsistence exception because it is not part of the TTPI and during the listing process it did not provide sufficient information to substantiate the need for a subsistence exception.

In response to these requests, the NMFS initiated a review of its regulations. During the review, the NMFS examined the criteria that must be satisfied in order to authorize a subsistence take, the traditional uses of sea turtles in the central and western Pacific, and the status of the green sea turtle stocks. The NMFS determined that a subsistence authorization could be allowed only if an existing culture was dependent on the taking of sea turtles for its continued existence and that the turtle stock involved would not be jeopardized by the subsistence take.

As part of this review, the NMFS conducted public hearings in Guam, the CNMI, American Samoa, and the Hawaiian Islands to collect comments and information on the need for subsistence exceptions in those areas. The NMFS issued a contract for the review of cultural dependence on sea turtles throughout the central and western Pacific and requested the NOAA Office of General Counsel Southwest to review the various subsistence exceptions and provide guidance on what criteria must be considered in authorizing a subsistence take. Concurrent with the review on subsistence taking, the NMFS conducted a review of the status of the listed sea turtle stocks. The results of the status review of green sea turtle stocks were incorporated in the review of the subsistence issue.

The review of cultural practices outside the TTPI revealed that no extant native cultures are dependent on the taking of sea turtles. The requests from the State of Hawaii and the Territory of Guam were not made on behalf of any particular cultural group, so they could not be considered under a subsistence exception at this time.

A home use exception that is available to everyone does not distinguish a native subsistence take from a recreational take and is not consistent with the Endangered Species Act. Home use and commercial use can be authorized only after green sea turtle stocks have recovered and are delisted.

Guam's complaint that the existing regulation for a subsistence exception is inequitable in the Mariana Archipelago is justified. However, the information considered in this review does not substantiate the need for subsistence take in Guam. The administrative record for the listing of sea turtles shows that the CNMI received its subsistence exception because of its political status as part of the TTPI and not because of a need or cultural dependence. This inequity will be resolved when the TTPI dissolves. At the time the Covenant of the CNMI becomes effective, the CNMI

will be subjected to the same regulations as Guam.

Therefore, the NMFS plans to retain the existing subsistence exception without modification and to establish a joint Pacific sea turtle recovery team with the U.S. Fish and Wildlife Service and the State and Territorial governments. The recovery team will be assigned the task of developing criteria for determining when sea turtle populations within U.S. jurisdiction in the central and western Pacific can be delisted and recommending management measures to promote the recovery of the stocks.

List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife, Exports, Fish, Fisheries, Imports.

Dated: December 20, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-18 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 2
Thursday, January 3, 1985

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 1030

[Docket No. AO-361-A22]

Milk in the Chicago Regional Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Correction

In FR Doc. 84-32895 beginning on page 49099 in the issue of Tuesday, December 18, 1984, make the following corrections:

1. On page 49101, second column, fifth line, "12" should have read "102".

2. On page 49102, third column, last paragraph, eighth line, "Class I" should have read "Class II".

3. On page 49104, third column, last complete paragraph, third line, "procedures" should have read "producers". Also, in the twelfth line, "able" should have read "unable".

BILLING CODE 1505-01-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 83-007N]

New Turkey Inspection System; Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 8, 1984, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal poultry products inspection regulations by establishing a voluntary and alternate method of post-mortem inspection for turkeys known as the New Turkey Inspection (NTI) system. At the request of a trade organization, FSIS is extending the comment period to February 21, 1985.

DATE: Comments must be received on or before February 21, 1985.

ADDRESSES: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to: Dr. John C. Prucha, (202) 447-3219.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION: On November 8, 1984, FSIS published a proposal in the **Federal Register** (49 FR 44640) to amend the Federal poultry products inspection regulations by establishing a voluntary and alternate method of post-mortem inspection for turkeys known as the New Turkey Inspection (NTI) system. The comment period was originally scheduled to end January 7, 1985. However, due to the fact that the turkey industry is very busy during the holiday season, a trade organization has requested FSIS to extend the comment period for 45 days to allow sufficient time to study the proposal and to develop meaningful comments and supporting data. FSIS has determined that there is sufficient justification for this extension, and is therefore extending the comment period until February 21, 1985.

Done at Washington, DC, on December 27, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-8 Filed 1-2-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-109-AD]

Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to Boeing Model 727 and 737 series airplanes, which requires installation of a positive indication of starter operation, by extending the compliance time. The time extension is necessitated by the lack of an adequate supply of modification parts. Failure to extend the compliance time would result in the unnecessary grounding of the airplanes affected.

DATES: Comments must be received no later than January 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "AVAILABILITY OF NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A

report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-109-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Airworthiness Directive (AD) 83-01-05, Amendment 39-4542 (48 FR 2962; January 24, 1983) was issued February 23, 1983, and required that operators of Model 727 and 737 series airplanes install engine start valve position indicators on the flight deck within two years. While the majority of these airplanes have since been modified to incorporate these indicators, the FAA has received reports of two recent problems which indicate that an extension of compliance time is necessary. These two problems were called to the FAA's attention by a petition from the Air Transport Association of America (ATA) and by several non-member operators:

First, numerous cracked start valve housings have been reported on the Boeing start valve indicating system on Model 737 airplanes. This condition is unsatisfactory. Redesign of the system, part fabrication, and retrofit of aircraft will require six to twelve months to complete. In the interim, operators are removing the pressure switch which is causing the failures.

Second, in order to comply with the requirements of the AD, a number of operators chose a valve modification which was manufactured by the AiResearch Corporation. AiResearch was unable to deliver the valves on time. In fact, operators have yet to receive valves for a large number of their affected airplanes.

AD 83-01-05 was originaly issued after public notice and comment. The compliance time was chosen based on the recognized degree of hazard and on parts availability projections. It was never the intent of the FAA that the Model 727/737 fleet should be grounded pending installation of a start valve indicating system. Service experience over the past two years has vindicated that position. Therefore, there is no present need to ground the Model 727/737 fleet because of the lack of acceptable start valve indicating system parts.

It is FAA's view that a 12-month extension of compliance time is necessary to prevent grounding of airplanes, major schedule disruptions, and inordinate expense, and that such an extension will be sufficient time to allow compliance without compromising safety.

For the foregoing reasons, an AD is proposed that would amend AD 83-01-05, Amendment 39-4542, to extend the compliance time to February 23, 1986. This extension of the period for compliance would provide operators of the affected airplanes with a means to avoid possible grounding of their aircraft due to a shortage of modification parts.

Since this AD would merely extend the compliance time, there would be no additional costs to operators.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by amending Airworthiness Directive 83-01-05, Amendment 39-4542 (48 FR 2962; January 24, 1983), by amending the compliance time in paragraph A. to read as follows:

"A. Prior to February 23, 1986, . . ."

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note. For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 727 and 737 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on December 18, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-109 Filed 1-2-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on December 7, 1984, consists of: modifications to the Indiana regulations pertaining to topsoil, backfilling and grading, confidentiality protection of information, annual certification of dams and embankmants, and inability to comply in inforcement actions; various editorial changes; and various cross-reference corrections to reflect new numbering.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. on February 4, 1985, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on January 28, 1985, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio

Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments not receive dy the time indicated under "Dates," or received at locations other than the OSM Indianapolis, Indiana Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business January 23, 1985. If not one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071–32108).

On December 7, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment to the Indiana regulations would amend various provisions of the approved Indiana program. Briefly, the proposed modifications and regulation cities are:

1. Indiana proposes to delete language which provides that the Director, IDNR, need not make available to certain parties, specific information concerning the National Register, if it was determined that disclosure of the information would create a risk of harm or destruction of the properties. 310 IAC 12–2–11.

2. Indiana proposes to add language concerning a demonstration of the suitability of topsoil substitutes or supplements. 310 IAC 12–3–46 and 310 IAC 12–3–80.

3. Indiana proposes to delete the exception to steep slope requirements that is provided for operations "where a person obtains a permit under the provisions of 310 IAC 12–3–95." 310 IAC 12–3–96.

4. Indiana proposes to delete language which provides an exception to disclosure of information for permit information containing "trade secrets or proprietary commercial information." 310 IAC 12–3–98.

5. Indiana proposes to add a section for surface mining and for underground mining to establish requirements for: topsoil removal and timing of removal, substitutes and supplements, storage and redistribution; and, subsoil segregation, storage and redistribution. 310 IAC 12–5–12.1 and 310 IAC 12–5–78.1.

6. Indiana proposes to add language concerning certification of dams and embankments meeting the size or other criteria of 30 CFR 77.216(a). 310 IAC 12–5–24 and 310 IAC 12–5–90.

7. Indiana proposes to add a section establishing timing and distance limitations for backfilling and grading. 310 IAC 12–5–54.1.

8. The State proposes to add sections establishing general requirements for backfilling and grading. 310 IAC 12–5–55.1 and 310 IAC 12–5–119.1.

9. The State proposes to add sections on stabilization of surface areas to establish requirements for erosion control and rills and gullies. 310 IAC 12–5–56.1 and 12–5–121.1.

10. The State proposes to add a section on backfilling and grading for thick overburden areas. 310 IAC 12–5–57.1.

11. Indiana proposes to add a section establishing requirements for backfilling and grading on steep slopes. 310 IAC 12–5–150.1.

12. Indiana proposes to delete language concerning confidentiality of persons supplying information relating to possible violations or imminent danger or harm. 310 IAC 12–6–2.

13. The State proposes to add a section concerning inability to comply in enforcement actions. 310 IAC 12–6.

14. Indiana proposes to repeal the following sections of its regulations: 310 IAC 12–5–11, 12–5–12, 12–5–13, 12–5–14, and 12–5–15 on topsoil; 12–5–54, 12–5–55, 12–5–56 and 12–5–57 on backfilling and grading; 12–5–77, 12–5–78, 12–5–79, 12–5–80 and 12–5–81 on topsoil (underground mining); 12–5–118, 12–5–119, 12–5–120 and 12–5–121 on backfilling and grading (underground mines); and 12–5–150, 12–5–151, 12–5–152, 12–5–153 and 12–5–154

on steep slope mining. These would be replaced by proposed new sections already listed above.

15. Indiana proposes numerous other changes to its regulations which are not substantive and which are either of an editorial nature or which change cross-references to reflect new numbering of certain regulations.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

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

Authority.—Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: December 24, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 85–65 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Kentucky as a modification to the Kentucky Permanent Regulatory Program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment would establish a program for the training, examination and certification of blasters. The amendment would also amend performance standards for the use of explosives.

This notice sets forth the times and locations that the Kentucky program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Comments not received on or before 4:00 p.m., February 4, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on January 28, 1985, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. W.H. Tipton, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 N. Broadway, Lexington, KY 40500.

FOR FURTHER INFORMATION CONTACT: Mr. W.H. Tipton, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Lexington Field Office listed below.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504;

Office of Surface Mining, Reclamation and Enforcement, 1100 "L" Street, NW., Washington, D.C. 20240;

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, KY 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Lexington, Kentucky, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business January 18, 1985. If no one requests to comment at a public hearing, the hearing will not be held. If only one person requests a public hearing, a public meeting may be held instead and the results of the public meeting included in the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed

explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendments

By a transmittal dated December 4, 1984, Kentucky submitted to CSM pursuant to 30 CFR 732.17, an amendment to the Kentucky regulatory program which would establish a blaster training and certification program and amend performance standards for use of explosives.

Concerning the proposed blasters certification program, on March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in an surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule, or March 4, 1984.

On January 20, 1984 Kentucky advised OSM that it would be unable to meet the March 4 deadline. Kentucky requested and received a nine month extension of the deadline to December 4, 1984 (49 FR 21926, May 24, 1984). Kentucky has submitted a proposed blaster training and certification program at this time in compliance with the extended deadline.

Concerning the proposed regulatory amendment to the performance standards for use of explosives, Kentucky is proposing changes at 405 KAR 18:120, as follows:

1. At Section, 1, Kentucky is proposing changes to the general requirements concerning who shall conduct blasts and when blast designs shall be submitted, what they shall contain and by whom they shall be prepared.

2. At Section 2, preblasting survey, Kentucky proposes changes concerning requests by residents and owners of dwellings for preblasting surveys.

3. Kentucky proposes changes to the requirements for surface blasting in Section 3, including changes to requirements pertaining to blasting times, unscheduled blasts, airblast levels, flyrock, prevention of adverse impacts, ground vibration, peak particle velocity, scale-distance equations, and blasting-level charts.

4. Kentucky proposes changes to requirements for seismographic measurements at Section 4.

5. Changes are proposed at Section 5, records of blasting operations.

Therefore, the Secretary is seeking public comment on the adequacy of the proposed program amendment. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will become part of the Kentucky program.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: December 27, 1984.

Wesley R. Booker

Acting Director, Office of Surface Mining.

[FR Doc. 85–122 Filed 1–2–84; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendment to the Ohio Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: By letters dated July 11 and 23, 1984, Ohio submitted program amendments to OSM consisting of changes to the regulations concerning use of explosives. OSM published a notice in the **Federal Register** on August 9, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 31912). The public comment period ended September 10, 1984.

OSM's review of Ohio's proposed amendments identified concerns relating to the preparation of blasting designs, preblasting surveys, conduct of the blast, and availability of blast records. OSM notified Ohio about its concerns on October 17, 1984, and on November 26, 1984, Ohio responded by revising the proposed amendments.

Accordingly, OSM is reopening and extending the comment period on Ohio's July 11 and 23, 1984, proposed amendment as modified on November 20, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 pm January 18, 1985 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227.

Copies of the Ohio program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the State's original and supplemental submittal and OSM's October 10, 1984 letter to the State by contacting the OSM Columbus Field Office.

Office of Surface Mining, 1100 "L" Street, NW, Room 5124, Washington, D.C.

Ohio Division of Reclamation, Fountain Square, Building B, Columbus, Ohio.

FOR INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

By letters dated July 11 and 23, 1984, Ohio submitted program amendments consisting of:

Revision of rule 1501:13-9-06 concerning performance standards for use of explosives. The revision is intended to parallel the revised Federal Regulations at 30 CFR 816.61-.68 and 817.61-.68.

During review of the amendments, OSM identified several concerns:

(1) Ohio rule 1501:13-9-06(B)(4) would allow the blast design to be prepared by a blasting consultant, seismologist or professional engineer, in addition to a certified blaster, who has been trained in current blasting technology and State and Federal blasting laws and regulations.

(2) Ohio rule 1501:13-9-06(C)(1), relating to preblasting surveys, defines "permit area" to exclude haul roads, sediment ponds and other facilities isolated from the main body of the permit area if blasting will not occur at these facilities.

(3) Ohio rule 1501:13-9-06(D)(6), concerning notice of surface blasting incident to underground mining, is worded to require written notice to local governments only if they are within one-half mile of the blasting site.

(4) Ohio rule 1501:13-9-06(F)(2), would provide that if a permittee is in compliance with all the requirements of paragraphs (F)(6) and (F)(7), concerning airblast and ground vibration, the Division shall assume blasting is being conducted in a manner to prevent damage.

(5) Ohio rule 1501:13-9-06(G), concerning availability of blast records, provides that records shall be made available for inspection by the devision and by "any person who may be adversely affected by the permittee's blasting operation."

OSM notified Ohio about these concerns by letter dated October 10, 1984, and Ohio responded by submitting clarifying information on November 26, 1984. The clarifying information amends some regulatory language and provides justification for rule 1501:13-9-06(B)(4) on blast design.

The full text of the proposed program amendments and of the subsequent material is available for review at the locations listed above under **ADDRESSES.** Accordingly, OSM is now seeking public comment on the adequacy of Ohio's July 11 and 23, 1984, amendments in light of the State's November 26, 1984, modification.

List of Subjects in 30 CFR Part 935

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: December 27, 1984.

Wesley R. Booker,

Director, Office of Surface Mining.

[FR Doc. 85-121 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2748-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is reproposing rulemaking on several revisions to the Wisconsin State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). The revisions pertain to Chapter 154 of the Wisconsin Administrative Code (WAC), specifically Sections NR 154.01, Definitions, and NR 154.13, Control of Organic Compound Emissions, and are meant to clarify the VOC Reasonably Available Control Technology (RACT) rules. USEPA's action is based upon a SIP revision request that was submitted by the State of Wisconsin, and on a subsequent request made by the State in response to the original notice of proposed rulemaking (49 FR 24543; June 14, 1984). The intent of today's rulemaking is to present a discussion of the difference between the original notice of proposed rulemaking and this reproposal. Today's rulemaking also provides additional opportunity for public comment on the proposed revisions and on USEPA's proposed action.

DATE: Comments on these revisions and on USEPA's proposed action must be received by February 4, 1985.

ADDRESSES: Copies of the SIP revision are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 1983, the Wisconsin Department of Natural Resources (WDNR) requested that certain revisions to NR 154.01, Definitions, and NR 154.13, Control of Organic Compound Emissions, be incorporated into the Federally-approved State Implementation Plan (SIP). A notice of proposed rulemaking approving these revisions was published on June 14, 1984 (49 FR 24543). In that notice, USEPA advised the public that it had 30 days to comment on the proposed revisions to Wisconsin's VOC rules. On July 11, 1984 the WDNR submitted a comment to USEPA stating that it had reviewed the notice of proposed rulemaking, and had apparently erred when submitting the proposed revisions. A preliminary draft of the proposed revisions had been submitted to USEPA for approval, instead of the final draft. The WDNR requested that USEPA rulemake on the correct version of the rule. In today's action, USEPA is proposing to approve

the correct version of the VOC SIP revisions that were enacted in Wisconsin by means of Natural Resources Board Order Number A–36–82, and that became effective on August 1, 1983. These revisions are meant to clarify the VOC RACT rules, and to allow the WDNR to extend the RACT compliance date for certain can coating operations.

Proposed Revisions to NR 154.01

In the June 14, 1984, notice of proposed rulemaking, USEPA proposed approval of a revised definition for "beaded can", identified at NR 154.01 (28m) of the WAC. The definition for "beaded can" has been deleted. It is no longer necessary in view of the withdrawal of the proposed interim emission limit for beaded can operations. USEPA proposes approval of the deletion.

USEPA also proposed approval of a definition for "energy intensive control device" in the original notice of proposed rulemaking. This definition is identified at NR 154.01(68m) of the WAC. This definition remains essentially the same as originally proposed with the exception of one additional phrase, which reads ". . . 70°F to 800°F, taking into account energy recovered in the form of heat or organic compounds." Wisconsin amended the original definition in order to reflect the net energy consumption of air pollution control devices. USEPA proposes to approve this amended definition.

Proposed Revisions to NR 154.13

In the original notice of proposed rulemaking (49 FR 24543; June 14, 1984), USEPA proposed to approve two revisions to WAC section NR 154.13, Control of Organic Compound Emissions. They pertained to subsections NR 154.13(4)(b)3 and NR 154.13(4)(c)3. The revision to NR 154.13(4)(b)3 clarified the WDNR's intent with regards to capture systems. The revision to NR 154.13(4)(c)3 extended the final compliance date for certain can coating operations. These revisions were discussed in detail in the June 14, 1984, notice of proposed rulemaking (49 FR 24543), and remain essentially the same except for the deletion of the proposed interim emission limit for 2-piece beaded can exteriors. This emission limit has been deleted from NR 154.13(4)(c)3.a., because the WDNR has since determined that the only facility to which this limit would apply is meeting the emission limits contained in NR 154.13(4)(c)2 of the WAC, through the internal offset provisions of NR 154.13(13)(b). Therefore, no compliance extension is necessary. It should be noted that USEPA does not consider NR 154.13(13)(b) to be a generic bubble rule, which relieves Wisconsin of the obligation to submit modifications granted under this rule as SIP revisions for USEPA approval.

In their July 11, 1984 submittal, the WDNR requested that USEPA propose approval of a third revision to NR 154.13 pertaining to subsection NR 154.13(13)(b)1.c. This revision streamlines the equation that determines the theoretical volume fraction of solids that can be present in the coating, or ink, in order to meet the allowable emission rate for each coating or printing line. The equation has been revised to read:

$$D_{1,2,\ldots n} = 1 - \frac{(A_1, 2, \ldots n)}{(P_1, 2, \ldots n)}$$

$P_1, 2, \ldots n$ means the density of the solvent, in kilograms per liter (pounds per gallon), used in the coating, or ink, delivered to the applicator. USEPA proposes to approve this revision.

Conclusion

USEPA has reviewed the revisions to sections NR 154.01 and NR 154.13 of the WAC and proposes to approve them as part of the Wisconsin SIP. The complete text of these revisions can be found in the WAC.

Interested persons are invited to submit comments on each of these actions. USEPA will consider all comments received by February 4, 1985.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Paticulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))).

Dated: December 10, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–87 Filed 1–2–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A–5–FRL–2748–4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed Rulemaking; extension of the public comment period.

SUMMARY: On September 26, 1984 (49 FR 37807), USEPA proposed to revise the Total Suspended Particulate (TSP) designation for the City of Milwaukee from primary and secondary nonattainment to secondary nonattainment. The proposed revision would narrow the boundaries of the secondary nonattainment area, and would eliminate the designation of primary nonattainment. Comments on the redesignation and on USEPA's proposed action were to be received by October 26, 1984. The State of Wisconsin requested an extension of the public comment period due to the large amount of interest in the redesignation. USEPA granted an extension to November 30, 1984. The State of Wisconsin has requested an additional extension of the public comment period. This extension would allow the State a reasonable opportunity to respond to some of the comments that have been received in response to the proposed rulemaking. Therefore, the public comment period is extended to December 31, 1984.

DATE: Comments must be received on or before December 31, 1984.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen Comerford, (312) 886–6034.

Dated: December 20, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–89 Filed 1–2–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act; Fee Schedule Change

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to amend its fee schedule for processing Freedom of Informat on Act requests in order to depict the current costs of such services.

DATES: Comments must be received on or before February 4, 1985.

ADDRESS: Comments are to be submitted to Director, Office of Information Resources Management, U.S. Department of the Interior, Washington, D.C. 20240. Comments received, as well as the rulemaking file, will be available for public inspection during regular business hours in the Division of Directives and Regulatory Management.

FOR FURTHER INFORMATION CONTACT: Richard A. Stephan, Division of Directives and Regulatory Management, Office of Information Resources Management, (202) 343–6191.

SUPPLEMENTARY INFORMATION: The Department's uniform fee schedule for making records available to the public under the Freedom of Information Act was last revised in 1981. The schedule, published as Appendix A to 43 CFR Part 2, as it presently exists does not accurately reflect the cost of making records available to the public. Accordingly, the Department finds it necessary to propose an increase in the standard fees for searching for and photocopying documents in order to recover some of the considerable expense of administering the Act.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The principal author of this document is Robert Jarcho, Office of Information Resources Management.

List of Subjects in 43 CFR Part 2

Freedom of Information Act, Privacy Act.

It is hereby proposed to amend 43 CFR Part 2 as set forth below.

Dated: December 7, 1984.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary, Policy, Budget and Administration.

PART 2—[AMENDED]

1. The authority citation for 43 CFR Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460, unless otherwise noted.

2. In § 2.19, the introductory paragraph of (c)(3) is revised and a new paragraph (f) is added to read as follows:

§ 2.19 Fees.

* * * * *

(c) * * *

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests shall be waived if the total amount of the fee does not exceed $15.00 or may be waived or reduced if the request involves:

* * * * *

(f) *Filling procedures.* A Bill for Collection, Form DI–1040, shall be prepared for each request which requires the collection of search and duplication costs. The requester shall be provided the first sheet of the DI–1040. The Accounting Copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI–1040 to the finance office.

3. Appendix A to 43 CFR Part 2 is revised to read as follows:

Appendix A—Fees

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for and duplicating records in connection with requests made under the Freedom of Information Act. The fees are also applicable to services provided in duplicating and making available records in response to requests made under the Privacy Act. It also states the fees to be charged for certification of documents.

(1) *Copies, basic fee.* For copies of documents reproduced on a standard office copying machine in sizes up to 8½" × 14", the charge will be $0.13 per copy.

Examples: For one copy of a three-page document, the fee would be $0.39. For two copies of a three page document, the fee would be $0.78. For one copy of a 60-page document, the fee would be $7.80.

(2) *Copies, documents requiring special handling.* For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.

(3) [Reserved]

(4) [Reserved]

(5) *Clerical searches.* For each quarter hour, or portion thereof, spent by clerical personnel in locating a requested record or records: $2.25.

(6) *Nonclerical searches.* For each quarter hour, or portion thereof, spent by professional or managerial personnel in locating a requested record or records where the search cannot be performed by clerical personnel: $.50.

(7) [Reserved]

(8) *Certification.* For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be $0.25.

(9) [Reserved]

(10) *Computerized records.* Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

(a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(c) Material costs (i.e., paper, cards, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

(11) *Postage/mailing costs.* Return postage/mailing fees may be added to charges for records if the postage/mailing fee exceeds $1.00.

(12)–(13) [Reserved]

(14) *Other services.* When a response to a request requires services or materials other than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) *Effective date.* This schedule applies to all requests made under the Freedom of Information Act and Privacy Act after February 4, 1985.

[FR Doc. 85–19 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[Gen. Docket No. 20718]

Revision of Part 18 of the Commission's Rules Governing Industrial, Scientific, and Medical Equipment; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: In response to a petition from the National Electrical Manufacturers Association, the comment period for filing comments has been extended for comments and reply comments. The Notice regarding industrial, scientific, and medical equipment was published in the **Federal Register** on December 6, 1984, 49 FR 47628.

DATES: Comments are now due by February 6, 1985 and reply comments by February 22, 1985.

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

FOR FURTHER INFORMATION CONTACT: Lillane Volcy, Office of Science and Technology, (202) 653-8247.

Order Extending Time To File Comments and Reply Comments

In the matter of overall revision of Part 18 governing industrial, scientific, and medical equipment. Gen. Docket No. 20718.

Adopted: December 18, 1984.
Released: December 20, 1984.
By the Chief Scientist.

1. On November 29, 1984, the Commission released a Third Notice of Proposed Rule Making (*Notice*) in this proceeding. The *Notice* specified filing deadlines of January 7, 1985, for comments and January 22, 1985, for reply comments.

2. Pursuant to 47 CFR 1.46(b) the National Electrical Manufacturers Association (NEMA) has requested a 30-day extension of these filing deadlines. NEMA asserts that there is insufficient time to submit substantial and suitable data to the Commission, regarding the impact of the proposed regulations, especially since the comment period encompasses the Nation's major Holiday Season.

3. We recognize the concerns of NEMA and that additional time may be needed to gather relevant information on the effect of the proposed changes upon the industry. Because of the importance of this proceeding to both manufacturers and consumers, as well as our desire to have the most definitive responses possible, an extension of time to February 6, 1985, for filing comments and February 22, 1985, for filing reply comments in hereby ordered pursuant to the authority granted by § 0.241(d) of the Commission's Rules.

Robert S. Powers,
Chief Scientist.

[FR Doc. 84-33803 Filed 12-31-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. HM-166T; Notice No. 84-14]

Transportation of Hazardous Materials; Proposed Miscellaneous Amendments

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) is proposing to make several miscellaneous amendments to the regulations pertaining to the transportation of hazardous materials. This action is necessary to update the regulations and to reduce MTB's backlog of rulemaking petitions.

DATE: Comments must be received by March 7, 1985.

ADDRESS: Address comments to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in room 8426 of the Nassif Building, 400 7th Street S.W., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202)-426-2075.

SUPPLEMENTARY INFORMATION: This document is primarily designed to reduce regulatory burdens by incorporating changes in the Hazardous Materials Regulations based on either petitions for rulemaking submitted in accordance with 49 CFR 106.31 or on MTB's own initiative. These proposed amendments are in keeping with Executive Order 12291 and are designed to simplify existing regulations.

In Parts 106 and 107, these proposed amendments would remove the references to obsolete authority citations.

In Part 171, these proposed amendments would (1) revise § 171.7(d)(4)(iii) by updating the reference to the 1982 edition; (2) in § 171.7(d)(23) the words "Large Quantity" would be changed to read "Highway Route Controlled Quantity", and (3) in § 171.8 the definition of "Hazardous waste", and "Transport vehicle" would be revised and under "State-designated route" the words "Large Quantity" would be changed to read "Highway Route Controlled Quantity".

In Part 172, the Hazardous Materials Table in § 172.101 would be amended by (1) adding "Nitroethane" and "Nitropropane" as proper shipping names; and (2) adding "173.421-1" in column (5)(a) of the Table for the entry "Radioactive material, empty packages". In addition, it is proposed to: (1) Revise paragraph (e) of § 172.202; (2) revise paragraph (h) of § 172.203; (3) revise the introductory text of paragraph (c) in § 172.328 regarding the marking and placarding of certain nurse tanks; (4) change the words "motor vehicle" and "motor vehicles" to read "transport vehicle" and "transport vehicles", as appropriate, in §§ 172.502 (a), (b) and (c), 172.504 (a), (b), (c)(1), (c)(2), Tables 1 and 2 and footnotes; 172.506 (a) and (a)(1); 172.507, 172.508(a), 172.510(d), 172.516(a) and (b). Also, in § 172.507 a new paragraph would be added pertaining to the placarding of nurse tanks.

In Part 173, these proposed amendments include a new § 173.5a to exclude certain oilfield service vehicles from specification cargo tank requirements and would (1) add a new paragraph (c) to § 173.25 which would allow the use of specific types of drums as overpacks for packages of Class B poisons on the same transport vehicle with foodstuff, feed or any edible material intended for consumption by humans or animals; (2) remove paragraph (b)(4) of § 173.31 which requires safety relief devices of the frangible disc or fusible plug type on DOT-106 and DOT-110 tanks to be inspected before each loaded trip; (3) remove paragraph (b)(3) of § 173.32 pertaining to the approval of fusible plugs on DOT Specification 51S portable tanks by the Associate Director for HMR; (4) reinstate a sentence in § 173.34(c)(3) which was inadvertently deleted in Docket No. HM-172 (47 Fr 16183) on April 15, 1982; (5) remove an approval authorization for exceeding 115 percent of the minimum prescribed test pressure for testing cylinders after reheat treatment in § 173.34(g)(4)(ii); (6) authorize the use of DOT Specification 12H, 23F, and 23H fiberboard boxes for oil well cartridges in § 173.112(a)(2); (7) clarify § 173.114a (h)(3) regarding the

transportation of blasting agents in bulk packagings; (8) revise § 173.115(d)(2) to specify a test situation with a specific surface to volume ratio to determine the flash point; (9) add a new paragraph (b)(7) to § 173.118a to specify that combustible liquids in packagings of 110 gallons or more must be in compliance with §§ 173.1, 173.24, and 177.804; (10) remove an approval requirement in § 173.120(c); (11) clarify the introductory text of §173.131(a); (12) amend § 173.245(a)(38) to include boiler compound and water treatment compounds; (13) remove a duplicate marking and labeling requirement for electric storage batteries in §173.260(f) when transported in less-than-carload and less-than-truckload lots; (14) remove an approval authorization in § 173.272(i)(18) for the use of experimental type vented closures on DOT Specification 17F metal drums for export shipments of sulfuric acid; (15) remove "bromochlorodifluoromethane" as an authorized commodity in DOT Specification 3AL cylinders under the provisions of § 173.304(a)(3); (16) remove the requirement in §173.306(d) for automatic heating or refrigerating equipment of the gas burning type to be approved by the Associate Director for HMR; (17) amend Note 2 of § 173.315(a) to authorize DOT Specification MC 330 cargo tanks to be painted white, aluminum or a similar reflecting color on the upper two-thirds of the tank. Also, paragraph (m)(8) would be added regarding marking and placarding of certain nurse tanks; (18) amend § 173.346(a)(10) to permit use of DOT Specification 105A200ALW tank cars for ethion; (19) prohibit the use of collapsible rubber containers in § 173.366(a)(3) for arsenic (arsenic trioxide) or arsenic acid (solid); (20) remove footnote 8 in Table 5 of § 173.417(b)(2); (21) update the 1971 edition of the ANSI Standard N–14.1 in § 173.417(b)(5) to read 1982; (22) make an editorial change in § 173.421–1(a); (23) exempt empty radioactive materials packaging from the shipping paper requirements in the introductory text of § 173.427. Also, in § 173.427, paragraph (c) would be revised and paragraph (e) would be added.

In Part 174, these proposed amendments would (1) revise § 174.61(b) by removing the need for automatic heating or refrigerating equipment to be of a type examined by the Bureau of Explosives and approved by the Associate Director for HMR and (2) revise of § 174.101 (n) and (o) by removing the need for approval by the Department.

In Part 175, these proposed amendments would remove paragraph (a)(7) of § 175.45.

In Part 176, these proposed amendments would (1) remove the references to the obsolete "Authority" citation at the end of the index of Subpart 0; (2) remove paragraph (c) in § 176.5; (3) remove paragraph (b) in § 176.15; (4) remove the reference to 46 U.S.C. 170 in paragraphs (a)(4) and (b) of § 176.18; (5) remove a duplicate notification requirement in § 176.48(c); (6) revise § 176.96; (7) authorize the use of materials other than asbestos in § 176.135(c); (8) remove an out-dated approval requirement in §-176.163(c); and (9) prohibit the use of asbestos as a cushioning material in § 176.410(e)(2).

In Part 177, these proposed amendments would revise paragraph (e) of § 176.841 to authorize the transportation of class B poisons on the same vehicle with foodstuff when overpacked in certain metal drums.

In Part 178, these proposed amendments would (1) authorize markings to be on a neckring or footring on DOT Specification 4B, 4BA, and 4BW cylinders having a water capacity of not more than 25 pounds; (2) revise § 178.150–3(a)(2) by adding a Note 1 and (3) revise § 178.209–8(a)(2) to authorize an additional slotting configuration for DOT Specification 12H fiberboard boxes.

In addition to the above, the MTB is proposing to remove the words "tank motor vehicle" and inserting, in their place, the words "cargo tank" each time they appear in Parts 173–178 of 49 CFR.

The MTB certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Also, the MTB has further determined that this Notice (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be so minimal; (4) will not affect not-for-profit enterprises, or small governmental jurisdictions and (5) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

The following list of **Federal Register** Thesaurus of Indexing Terms apply to this notice of proposed rulemaking:

List of Subjects:

49 CFR Part 106

Hazardous materials transportation, Administrative practice and procedures.

49 CFR Part 107

Hazardous materials transportation, Programs procedures, penalties.

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

Regulation affected	Reason(s) for proposed change	Proposed amendment
Subchapter B, Part 106	On Aug. 26, 1983, Pub. L. 98-89 recodified the Maritime Shipping Laws of the United States into Subtitle II of Title 46 of the United States Code. The Dangerous Cargo Act of 1940 (RS 4472-46 U.S.C. 170) was partially repealed on the basis that it duplicated the Secretary's regulatory authority in the Hazardous Materials Transportation Act. Ships' Stores were retained in 46 U.S.C. 3306(a)(5).	In Part 106, the "Authority" citation would be amended by removing "R.S. 4472(7) (46 U.S.C. 170(7))".
Subchapter B, Part 106, Appendix A	Same as above	In part 106, Appendix A would be amended by removing and reserving paragraph (a)(1).
Subchapter B, Part 107	Same as shown for Subchapter B, Part 106.	In Part 107, the "Authority" citation would be amened by removing "46 U.S.C. 170(11)".

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 171.7(d)(4)(iii)	To update the ANSI N14.1 reference to the 1982 edition	In § 171.7, paragraph (d)(4)(iii) would be amended by changing "1971" edition to read "1982" edition.
§ 171.8	To remove that portion of the "Hazardous waste" definition that reads "or would be subject to these requirements absent an interim authorization to a state under 40 CFR Part 123, Subpart F". These words are no longer necessary due to the change in the applicability of the HMR for hazardous waste adopted in the final rule under HM-145D (49 FR 10507; Mar. 20, 1984).	In § 171.8, the definition of "Hazardous waste" would be revised to read as follows: "Hazardous waste", for the purposes of this subchapter, means a material that is subject to the hazardous waste manifest requirements of EPA specified in 40 CFR Part 262.
§ 171.8	Editorial correction. The Guidelines are being revised and the title will change to reflect the new terminology. Also, § 171.7(d)(23) and § 177.825(b)(1)(ii) would be changed accordingly.	In § 171.8, under "State-designated route" the words "Large Quantity" would be changed to read "Highway Route Controlled Quantity".
§ 171.8; § 172.502 (a), (b), and (c); § 172.504 (a), (b), (c)(1), (c)(2), the heading of both columns in Tables 1 and 2, footnote 2 of Table 1, and footnotes 8 and 9 of Table 2; § 172.506 (a), and (a)(1); § 172.507; § 172.508(a); § 172.510(d); § 172.516 (a) and (b).	To change the words "motor vehicle" and "motor vehicles" to read "transport vehicle" or transport vehicles", as appropriate. The definition of a motor vehicle does not provide a clear regulatory base for establishing the placarding requirements for a motor vehicle consisting of a truck with one or more trailers and a tractor with more than one trailer or a semitrailer and trailer. The definition of a motor vehicle, in part, includes a vehicle, tractor, trailer or semi-trailer or any combination thereof. The definition of a transport vehicle, in part, includes a truck trailer and semitrailer but each cargo-carrying body is a separate transport vehicle.	In 171.8, the definition of "Transport vehicle" would be revised to read as follows: "Transport vehicle" means a cargo-carrying motor vehicle such as a tractor, truck, semitrailer, trailer, tank car or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, etc.) is a separate transport vehicle. In §§ 172.502 (a), (b) and (c); 172. 504 (a), (b), (c)(1), (c)(2), the heading of both columns in Table 1 and 2, footnote 2 of Table 1, and footnotes 8 and 9 of Table 2; 172.506 (a) and (a)(1); 172.507; 172.508(a); 172.510(d); 172.512(a)(1); 172.512.516 (a) and (b) the words "motor vehicle" or "motor vehicles" would be changed to read "transport vehicle", or "transport vehicles", as appropriate.
§ 172.101	To add nitroethane and nitropropane as proper shipping names. Nitroethane has a closed cup flash point of 87° F. Nitropropane which would cover two isomers (i.e., 1-nitropropane and 2-nitropropane which ahve a closed cup flash point of 96° F. and 82° F. respectively). Both proposed shipping names are listed in the United Nations Recommendations for the Transport of Dangerous Goods.	See Table for proposed entries.

§172.101 Hazardous Materials Table.

+ /E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification numbers	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	ADD										
	Nitroethane	Flammable liquid	UN 2842	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Nitropropanes	Flammable liquid	UN 2608	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.101, Table	Editorial correction	In column (5)(a) of the § 172.101 Table, the reference "173.421-1" would be added for the entry "Radioactive material, empty packages".
§ 172.202(e)	To further clarify that a material (other than a material designated as a hazardous material in the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code) that is not designated as a hazardous material in 49 CFR may not be offered or transported as a hazardous material.	To revise paragraph (e) of § 172.202 to read as follows: (e) Except for those hazardous materials in the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code, a material that is not a hazardous material according to this subchapter may not be offered for transportation or transported when its description on a shipping paper includes a hazard class or an identification number specified in § 172.101.
§ 172.203(h)	To eliminate inconsistent requirements	In § 172.203, paragraph (h) would be revised to read as follows: § 172.203 *Additional description requirements.* . . . . . (h) *Transportation by highway.* Following the basic description for a hazardous material in a Specification MC 330 or MC 331 cargo tank, there must be entered for— (1) *Anhydrous ammonia.* (i) The words "0.2 PERCENT WATER" to indicate the suitability for shipping anhydrous ammonia in a cargo tank made of quenched and tempered steel as authorized by § 173.315(a)(1) Note 14 of this subchapter, or (ii) The words "NOT FOR Q AND T TANKS" when the anhydrous ammonia does not contain 0.2 percent or more water by weight. (2) *Liquefied petroleum gas.* (i) The word "NONCORROSIVE" or "NONCOR" to indicate the suitability for shipping "Noncorrosive" liquefied petroleum gas in a cargo tank made of quenched and tempered steel as authorized by § 173.315(a)(1) Note 15 of this subchapter, or . . . . . (ii) The words "NOT FOR Q AND T TANKS" for grades of liquefied petroleum gas other than "Noncorrosive"
§ 172.328(c)	Certain nurse tanks are constructed such that valves, fittings, gauges and a protective collar on the end of the tank make it impossible to affix the required markings and placard in their proper location and still be visible. For this reason, the MTB is proposing to eliminate the marking and placarding requirement on that end of this particular type of nurse tank.	In § 172.328, the introductory text of paragraph (c) would be revised to read as follows: (c) *Required markings: Gases.* Except for certain nurse tanks which must be marked as specified in § 173.315(m) of this subchapter, each cargo tank transporting flammable or nonflammable gas (including a cryogenic liquid) subject to this subchapter must be marked as specified in this part on each end and each side with: ————. . . . . .

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.507(b)	See § 172.328(c) for reason for change	In § 172.507, the present paragraph would be designated paragraph (a) and a paragraph (b) would be added to read as follows: (a) * * * (b) A nurse tank, meeting the provisions of § 173.315(m) of this subchapter, is not required to be marked or placarded on the end containing valves, fittings, regulators or gauges if those appurtenances prevent the markings and placard from being properly placed and visible. Other markings and placards, required by this subchapter, must be used.
§ 173.5a	This new section would preclude certain oilfield service vehicles from the cargo tank specification requirements applicable to transportation of flammable liquids. So called "hot oil" injection trucks are loaded only at the well sites being serviced, but they contain flammable residues when moving on the highways thereby making them subject to § 173.29. MTB does not believe the detailed specification requirements for cargo tanks should apply to these vehicles subject to the conditions it proposes.	A new § 173.5a would be added to read as follows: § 173.5a *Oilfield Service Vehicles.* (a) Notwithstanding § 173.29 of this subchapter, a cargo tank mounted on a motor vehicle used in oilfield servicing operations is not subject to the tank specification requirements of this subchapter if— (1) The cargo tank and associated equipment contains only residual amounts (i.e., it is emptied so far as practicable of a flammable liquid alone or in combination with water, (2) No flame producing device is operated during transportation, and (3) The proper shipping name is preceded by "Residual" on the shipping paper for each transportation movement on a public highway.
§ 173.25(c)	To authorize the use of specific types of drums as an overpack for packages of Class B poisons on the same vehicle with material that is marked or known to be foodstuff, feed or any edible material intended for consumption by humans or animals. Also, § 177.841(e) would be revised to reference § 173.25(c).	In § 173.25, paragraph (c) would be added to read as follows: (c) Hazardous materials classed Poison B may be transported in the same transport vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the Poison B material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section, is overpacked as speacified in § 177.841(e), or in a container meeting the following requirements: (1) The overpack conforms to Specification 5C (§ 178.83 of this subchapter), or (2) The overpack is a salvage drum as prescribed in § 173.3(c) of this subchapter, with the following additional requirements: (i) Maximum rated capacity is 65 gallons; (ii) Be constructed of steel with a minimum of 16 gauge thickness; and (iii) Meets the performance standards of Specification 17C (§ 178.115 of this subchapter).
§ 173.31(b)(4)	The Compressed Gas Association, Inc. has petitioned for the removal of § 173.31(b)(4) which requires safety relief devices of the frangible disc or fusible plug type used on DOT–106A or 110A tanks to be inspected before each loaded trip by removing at least one vent for visual inspection. If it shows signs of deterioration, all devices must be removed and inspected and those which do not meet the requirements must be renewed. The MTB agrees that because of the other safety checks specified in §§ 173.24 (a) and (c)(5), § 173.31 (b)(1), (d)(1), and (d)(5), public safety will not be reduced.	In § 173.31, paragraph (b)(4) would be removed and reserved.
§ 173.32(b)(3)	Referenced paragraph authorizes the use of fusible plugs on DOT Specification 51S portable tanks when the container is filled by weight. Size, number, and location, as well as character and physical properties of fusible plugs shall be examined by the Bureau of Explosives and approved by the Associate Director for HMR. Since these tanks are over 33 years old and no approvals have been issued by the Associate Director for HMR, the MTB believes that paragraph (b)(3) should be removed.	In § 173.32, paragraph (b)(3) would be removed and paragraph (b)(4) would be redesignated (b)(3).
§ 173.34(c)(3)	Docket No. HM–172 (47 FR 16183) published April 15, 1982 inadvertently deleted the second sentence of paragraph (c)(3)(i). This reinstatement is necessary in order to eliminate requests for a marked service pressure change for those cylinders which failed the hydrostatic test and were not requalified.	In § 173.34, paragraph (c)(3) would be amended by adding a sentence at the end to read as follows: (c) * * * (3) * * *. A service pressure change is not authorized for a cylinder which fails to pass the prescribed periodic hydrostatic retest, unless it is reheat treated and requalified in accordance with this section.
§ 173.34(g)(4)(ii)	To eliminate an approval authorization for exceeding 115 percent of the minimum prescribed test pressure for testing cylinders after reheat treatment. The MTB believes that the criteria specified in paragraph (g)(4) (i) and (ii) is adequate and specific approval of the Associate Director for HMR should not be required.	To revise paragraph (g)(4)(ii) of § 173.34 to read as follows: (ii) The permanent expansion shall not be less than 3 percent nor more than 10 percent of the total expansion in the hydrostatic retest, in which case the flattening and physical tests are not required. For this alternative method the hydrostatic retest pressure may not exceed 115 percent of the minimum prescribed test pressure.
§ 173.112(a)(2)	To authorize the use of DOT Specification 12H, 23F, or 23H fiberboard boxes for oil well cartridges as authorized for certain high explosives.	To revise paragraph (a)(2) of § 173.112 to read as follows: (2) Specification 12B, 12H, 23F or 23H (§§ 178.205, 178.209, 178.214, 178.219 of this subchapter). Fiberboard boxes. Gross weight not to exceed 65 pounds. Hand holes are not authorized.
§ 173.114a	To clarify that Blasting agents may not be transported in any bulk packagings except under the terms of an exemption issued by the Office of Hazardous Materials Regulation.	In § 173.114a, paragraph (h)(3) would be removed; paragraph (i) would be redesignated (j) and 176.400 through 176.415 would be added. A new paragraph (i) would be added to read as follows: (i) Blasting agents may not be transported in bulk packagings except in accordance with the terms of specific exemptions issued by the Office of Hazardous Materials Regulation.
§ 173.115(d)(2)	The Dresser Industries, Inc. has petitioned to amend paragraph (d)(2) of § 173.115 to specify a test situation with a specific surface to volume ratio for the 4-hour evaporation period. The MTB agrees that the percentage of liquid that evaporates would seem to depend on the ratio of surface area exposed to the air versus the liquid volume. The MTB is suggesting a ratio of one unit of surface area to six units of volume.	In § 173.115, the second and third sentences of paragraph (d)(2) would be amended to read: (d) * * * (2) * * *. If it is determined by this test that the flash point is higher than 20 °F. (−6.67 °C), a second test shall be made as follows: a portion of the mixture shall be placed in an open beaker (or similar container) of such dimensions that the height of the liquid can be adjusted so that the ratio of the volume of the liquid to the exposed surface area is 6. The liquid shall be allowed to evaporate under ambient pressure and temperature (20 to 25 °C) for a period of 4 hours or until 10% by volume has evaporated whichever comes first. A flash point is then run on a portion of the liquid remaining in the evaporation container and the lower of the two flash points shall be the flash point of the material.
§ 173.118a	At present, shipments of combustible liquids in packagings having a rated capacity greater than 110 gallons do not have to be in conformance with 173.24, and 177.804. It was never the intent to exempt combustible liquids from the above referenced sections. A change is needed in order for leaking cargo tanks to be placed out-of-service and to pursue enforcement actions, if necessary.	To add paragraph (b)(7) to § 173.11a to read as follows: (b) * * * (7) The requirements of §§ 173.1, 173.24, 174.1 and 177.804 of this subchapter

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.120(c)	To eliminate the need for automatic heating or refrigerating equipment of the flammable liquid type to be examined by the Bureau of Explosives and approved by the Associate Director for HMR. The present wording states that the heating or refrigerating equipment is considered as carrier's equipment and is not subject to any other requirements of this subchapter. When the truck body or trailer is loaded on the flat car the words "carrier's equipment" becomes questionable. The MTB is proposing to revise the last sentence to read "The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of of this subchapter.".	In § 173.120, paragraph (c) would be revised to read as follows: (c) *Truck bodies or trailers on flat cars.* Tank bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter.
§ 173.131(a)	The introductory text of paragraph (a) states that certain specification containers must be used; however, paragraph (a)(2) authorizes certain nonspecification cargo tanks. The present wording is confusing to some people.	In § 173.131, the introductory text of paragraph (a) would be revised to read as follows: (a) Road asphalt, or tar, liquid must be packaged as follows:
§ 173.245(a)(38)	Prior to Docket HM-166-0, Boiler compound, liquid and Water treatment compounds, liquid were authorized to be packaged in DOT Specification 57 portable tanks under the provisions of § 173.245(a)(7). Effective Sept. 30, 1984, these two commodities must be described as Corrosive liquid, n.o.s. and are not authorized in § 173.245(a)(38), as presently written. The MTB is proposing to allow the shipment of corrosive liquids, n.o.s. in steel portable tanks.	In § 173.245, paragraph (a)(38) would be revised to read as follows: (38) Specification 57 (§ 178.253 of this subchapter). Steel portable tank. Authorized for transportation by water when having a minimum design pressure of 9 psig and equipped in accordance with § 178.253-4, except that frangible devices are not authorized. Also, for water transportation, no pressure relief device may open at less than 5 psig.
§ 173.260(f)	Paragraph (f) requires less-than-carload and less-than-truckload lots of electric storage batteries containing electrolyte or corrosive battery fluid to be marked and labeled. This paragraph is redundant of the marking and labeling requirements in Part 172.	In § 173.260, paragraph (f) would be removed and reserved.
§ 173.272(i)(18)	To eliminate an approval authorization for the use of experimental type vented closures on DOT Specification 17F metal drums for export shipments of sulfuric acid. No approvals have been issued by the Associate Director for HMR nor do we anticipate any in the foreseeable future.	To revise paragraph (i)(18) of § 173.272 to read as follows: (18) Specification 17F (§ 178.117 of this subchapter). Metal barrels or drums (single-trip only). Authorized for sulfuric acid of 77.5 percent to 98 percent concentrations with or without an inhibitor, provided such acid has a corrosive effect on steel no greater than 93.2 percent sulfuric acid, measured at 100 °F.
§ 173.304(a)(3)	Docket HM-176 (46 FR 62452) added paragraph (a)(3) and included a liquefied gas identified as "bromochlorodifluoromethane". The MTB proposes to delete "bromochlorodifluoromethane" because it is not regulated under 49 CFR.	To revise paragraph (a)(3) of § 173.304 to read as follows: (3) Specification 3AL (§ 178.46 of this subchapter) cylinders are authorized for the following liquefied gases: cyclobutane, hydrogen selenide, propylene, silane, carbonyl sulfide, vinyl bromide, and dimethyl ether. Shipments of flammable gases are authorized only when transported by highway, rail and cargo aircraft only.
§ 173.306(d)	To eliminate the need for automatic heating or refrigerating equipment of the gas burning type to be examined by the Bureau of Explosives and approved by the Associate Director for HMR. See § 173.120(c) for further explanation.	In § 173.306, paragraph (d) would be revised to read as follows: (d) *Truck bodies or trailers on flat cars; automobiles, motorcycles, tractors, or other self-propelled vehicles.* (1) Truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter.
§ 173.315(a), Note 2	To authorize DOT Specification MC 330 cargo tanks to be painted a white, aluminum or similar reflecting color on the upper two-thirds of the tank. The proposed change is based on a request from the National Tank Truck Carriers, Inc.	To amend Note 2 of § 173.315(a) by adding the following sentence: **Note 2.—**" " " Specification MC 330 cargo tanks may be painted as specified for MC 331 cargo tanks.
§ 173.315(m)(8)	See § 172.328(c) for reason.	In § 173.315, paragraph (m)(8) would be added to read as follows: (m) " " " (8) Is marked as specified in § 172.328 of this subchapter and placarded as specified in § 172.514 of this subchapter, except that a nurse tank otherwise conforming with the provisions of this section need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges.
§ 173.346(a)(10)	Prior to the 1960 edition of Title 49, "ethion" was properly described as organic phosphate compound and transported in DOT Specification 105A200ALW or 105A300W tank cars under the provisions of § 173.356(a)(11). At present, ethion is listed by name in the § 172.101 Table, but the packaging section reference is § 173.346 which does not authorize the use of the 105A200ALW tank car.	To amend paragraph (a)(10) of § 173.346 by adding DOT Specification 105A200ALW tank car.
§ 173.366(a)(3)	Shipments of Arsenic (*arsenic trioxide*) or arsenic acid (solid) is authorized to be shipped in a collapsible, rubber container, not over 70 cubic feet capacity when examined by the Bureau of Explosives and approved by the Associate Director for HMR. To our knowledge, only one container has been approved in the past thirty-three years. For this reason, the MTB is proposing removal of paragraph (a)(3).	In § 173.366, paragraph (a)(3) would be removed.
§ 173.417(b)(2), Table 5.	Editorial change. Footnote "8" in Table 5 was inadvertently added by HM-169 on Mar. 10, 1983.	To amend Table 5 in § 173.417(b)(2) by removing footnote 8 and the "8" in column 1 immediately preceding "H/X-0".
§ 173.417(b)(5)	To update the ANSI N14.1 reference to the 1982 edition.	In § 173.417, paragraph (b)(5) would be amended by changing "N-14.1-1971" to read "N14.1-1982".
§ 173.421-1(a)	For clarification.	In § 173.421-1, paragraph (a) would be amended as follows: After "UN 2911" remove the semicolon and add a comma, remove the next word "or", after "UN 2909" remove the words "as appropriate" and add "or 49 CFR 173.427 for excepted radioactive material, empty packages, UN 2908".
§ 173.427	The present introductory text does not except empty packagings from shipping papers as provided for other excepted category packages. In view of the low allowable internal contamination limits, detailed shipping papers are not warranted.	To revise the introductory text of § 173.427 to read as follows: A packaging which previously contained radioactive materials and has been emptied of contents to far as practical, is excepted from markings, shipping paper, certification and labeling requirements of this subchapter and from requirements of this subpart provided that:
§ 173.427(c)	To remove the reference to "Table 10" in paragraph (c) because Table 10 specifies the limits for wiping determination of contamination and § 173.443 allows use of other methods as well.	To revise paragraph (c) of § 173.427 to read as follows: (c) Internal contamination does not exceed 100 times the limits in § 173.443.
§ 173.427(e)	For clarification.	To add paragraph (e) to § 173.427 to read as follows: (e) The packaging is prepared for shipment as specified in § 173.421-1.
§ 174.61(b)	To eliminate the need for automatic heating or refrigerating equipment to be a type examined by the Bureau of Explosives and approved by the Associate Director for HMR. See § 173.120(c) for further explanation.	In § 174.61, paragraph (b) would be revised to read as follows: (b) A truck body, trailer or freight container equipped with automatic heating or refrigerating equipment which has a fuel or article classed as a hazardous material may be loaded and transported on a flat car as part of a joint rail-highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter. The truck body, trailer or freight container must be secured on the flat car so that it cannot change position during transit.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 174.101 (n) and (o)	To eliminate the need for a freight container to be a type approved by the Department. Also, the need for the fire retardant paint to be of a type approved by the Department would be eliminated in paragraphs (n) and (o).	In § 174.101, the introductory text of paragraph (n) and (o) would be revised to read as follows: (n) A container car or freight container on a flatcar or a gondola car other than a drop-bottom car, when properly loaded, blocked, and braced to prevent change of position under conditions normally incident to transportation, may be used to transport any Class A explosive except black powder packed in metal containers. A freight container must be designed, constructed, and maintained so as to be weather tight and capable of preventing the entrance of sparks. In addition: * * * * * (o) Class A or Class B explosives may be loaded and transported in a tight closed truck body or trailer on a flatcar car. Wooden boxed bombs, rocket ammunition, and rocket motors, Class A or Class B explosives, which due to their size cannot be loaded in tight, closed truck bodies or trailers, may be loaded in or on open-top truck bodies or trailers. However, they must be protected against accidental ignition. In addition: * * * * *
§ 175.45(a)(7)	To eliminate the confusion of reporting hazardous materials incidents under § 175.45. In § 175.45 the operator who transports hazardous materials must report each incident to the nearest FAA Civil Aviation Security office by telephone. Paragraph (7) of § 175.45 states that "If the operator conforms to the provisions of this section, the carrier requirements of § 171.15 except § 171.15(c) of this subchapter shall be deemed to have been satisfied" Since the Civil Aviation Security Offices are not manned on a 24-hour basis, an incident may not be reported in a timely manner. Therefore, the removal of paragraph (a)(7) is being proposed.	In § 175.45 paragraph (a)(7) would be removed.
Part 176	Same as shown for Subchapter B, Part 106	In Part 176, the "Authority" citation would be amended by removing "46 U.S.C. 170(7) (a-c);"
§ 176.5(c)	The provisions of this paragraph are covered by § 173.51	In § 176.5, paragraph (c) would be removed and reserved.
§ 176.15(b)	In 33 CFR 160.126, Withholding of Clearance, delegates to the District Commander or Captain of the Port authority to request the Secretary of Treasury, or his authorized agent, to withhold the clearance required under 46 U.S.C. 91 of any vessel, the owner or operator of which is subject to any of the penalties under 33 U.S.C. 1232.	In § 176.15, paragraph (b) would be removed.
§ 176.18 (a)(4) and (b)	Same as shown Subchapter B, Part 106	In § 176.18, paragraph (a)(4) and paragraph (b) would be amended by removing the reference to "46 U.S.C. 170 and".
§ 176.48(c)	To remove a duplicate notification. There is no need for the master of the vessel to notify the nearest Captain of the Port (COTP) and the Commandant (GMHM) when a hazardous materials shipment is jettisoned or lost. If such an incident occurs, the COPT would advise the Commandant (G-MTH).	In § 176.48, paragraph (c) would be amended by deleting the words "and the Commandant (GMHM)".
§ 176.96	To specify that only barges constructed of steel may be used to carry hazardous materials. A carrier who wishes to use a non-steel barge would have to request a DOT exemption.	§ 176.96 would be revised to read as follows: § 176.96 *Materials of construction.* Only barges constructed of steel may be used to carry hazardous materials.
§ 176.135	To authorize the use of materials other than asbestos to be used in the construction of magazines.	In § 176.135, the third and fourth sentences of paragraph (c) would be amended to read as follows: (c) * * * "Tween deck hatch covers of wood forming the base of a magazine must be completely covered with bulkhead panels approved by the Coast Guard under 46 CFR 164.006 or an equivalent thermal insulative material acceptable to the Captain of the Port. The joints of the panels must be staggered midway between the joints formed by the wooden hatch covers and the magazine must be constructed in accordance with the applicable provisions of § 176.138, except that the panels must be completely covered with wood dunnage. * * *
§ 176.163(c)	To remove paragraph (c) because no request for approval of powered conveyors have ever been received.	In § 176.163, paragraph (c) would be removed and reserved.
§ 176.410(e)(2)	To authorize the use of materials other than asbestos. Reference to asbestos as a cushioning material was removed from Part 173 under Docket HM-166D (FR 45 62079), September 18, 1980. Removal of all of paragraph (e) has been suggested and will be evaluated during the final rulemaking process.	To revise the last sentence of paragraph (e)(2) in § 176.410 to read as follows: (2) * * * The deck or bulkhead must be sheathed on the oxidizing materials stowage side with an appropriate fire-resistant insulation.
§ 177.841(e)	To authorize class B poisons to be transported on the same vehicle with material that is marked or known to be foodstuff, feed or any edible material intended for consumption by humans or animals. See proposed change to § 173.25(c) for additional information.	In § 177.841, paragraph (e) would be revised by adding the following: * * * or when overpacked in a metal drum as specified in § 173.25(c) of this subchapter.
§ 178.50-19(a), § 178.51-19(c), § 178.61-20(c).	To authorize the markings to be on a neckring or footring on DOT Specification 4B, 4BA, and 4BW cylinders having a water capacity of not more than 25 pounds.	In §§ 178.50-19(a), 178.51-19(c), and 178.61-20(c) a new paragraph would be added to read as follows: On neckring or footring permanently attached to the cylinder, provided the cylinder water capacity does not exceed 25 pounds.
§ 178.150-3(a)(2)	Reference to Note 1 and Note 2 were omitted from the specification when the table in paragraph (a)(2) was added.	In § 178.150-3 paragraph (a)(2) would be revised to read as follow: (2) Single bottle cases:

	Nominal capacity of inside containers			
	Pint	Quart	5 pts.	Gallon
Side wall, inches	3/16	3/16	3/16	1 1/2
Top wall, inches (See Note 1)	3/16	3/16	3/16	1
Bottom wall, inches	1	1	3/4	1 1/2

Note.—In recess for closure cap for inside container, 1/4-inch thickness is permissible: closure cap shall not be in contact with inside top section.

§ 178.209-8(a)(2)	To authorize an additional slotting configuration for DOT Specification 12H fiberboard boxes. The proposed variation is authorized but is not clearly stated in the specification.	To revise § 178.209-8(a)(2) to read as follows: (2) Box to consist of full depth top and bottom sections completely telescoping. No inner lining tube required. Four variations are authorized: one with bottom slotted on ends and cover slotted on sides; second, with both cover and bottom slotted on sides; third, with bottom slotted on sides and cover slotted on ends; and fourth, with sides and ends (both covers and bottom) not slotted, manufacturer's joint a side lap glued or stapled to end, closing flaps to form top and bottom of box with side closing flaps out and overlapping. **Note 1.**—Hand-holes oval in shape, not more than 1 inch in width by 3 inches in length, and horizontal with top score line, are authorized in ends of top section of boxes.

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(49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of App. A to Part 106)

Issued in Washington, D.C., on December 27, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR 85-69 Filed 1-2-85; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 11]

Federal Motor Vehicle Safety Standards; Extension of Public Comment Time

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; extension of period for public comment.

SUMMARY: On December 7, 1984 (49 FR 47880), NHTSA published in the **Federal Register** a notice proposing an amendment to Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, that would allow motor vehicles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps with two such light sources. In response to a request from Ford , Chrysler, and K-D Lamp Company the comment closing date is changed from January 7, 1985 to January 14, 1985.

DATES: Comments on the notice of proposed rulemaking must be received on or before January 14, 1985.

ADDRESS: Comments should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C, 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426-2720.

SUPPLEMENTARY INFORMATION: On December 7, 1984 (49 FR 47880), NHTSA published in the **Federal Register** a notice proposing an amendment to Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, that would allow motor vehicles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps with two such light sources. Subsequently, Ford Motor Company, Chrysler Corporation and K-D Lamp Company filed timely petitions with the agency seeking an extension of the comment closing date. Ford and K-D requested a 30-day extension and Chrysler requested a 45-day extension. The companies said that traditionally their offices are closed down for the holidays during the last part of December and thus they would not have sufficient time to prepare a response to the notice.

The agency recognizes that because of the holiday closings, Ford, Chrysler, and K-D may not have sufficient time to prepare their comments. As emphasized in the notice, the agency wants to take prompt action on this proposal because of the need for manufacturers to implement their model year 1986 product plans. Since only three manufacturers have petitioned for an extension and since there is a need for prompt action on this notice, the agency has decided to grant a 7-day extension. The comment closing date is therefore changed from January 7, 1985 to January 14, 1985.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on December 28, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-33992 Filed 12-28-84; 2:46 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 41264-4164]

Threatened Fish and Wildlife; Guadalupe Fur Seal

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

ACTION: Proposed rule.

SUMMARY: On November 21, 1983, the NMFS received a petition to list the Guadalupe fur seal as an endangered species under the Endangered Species Act of 1973 (ESA). On February 8, 1984, notice was published in the **Federal Register** that the petition presented substantial information indicating the petitioned action may be warranted. A status review was conducted to determine if the petitioned action is warranted. Based on the low abundance of this species primarily due to 19th century commercial exploitation and a slow but persistent increase in population size over the past 30 years, the NMFS has determined tht listing the Guadalupe fur seal as a threatened species is warranted and, therefore, issues this proposed rule and requests comments. The intended effect is to provide the Guadalupe fur seal with the protection afforded threatened species.

DATE: Comments on the status review and the proposed rule must be received by March 4, 1985. Any request for a public hearing must be received by February 19, 1985.

ADDRESS: Richard B. Roe, Director, Office of Protected Species and Habitat Conservation, NMFS, NOAA, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Montanio, Office of Protected Species and Habitat Conservation, NMFS, Washington, D.C. 20235 ((202) 634–7471) or Mr. Dana J. Seagars, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731 ((213) 548–2518).

SUPPLEMENTARY INFORMATION:

Background

A petition submitted to the NMFS from the Center for Environmental Education, Seal Rescue Fund (CEE/SRF, 1983) states that the Guadalupe fur seal *(Arctocephalus townsendi)* should be listed as endangered under the ESA (16 U.S.C. 1531) for the following reasons:

1. Overutilization of the species by 19th century commercial sealing operations reduced the population to extremely low numbers.

2. Population growth has been slow since a breeding colony was discovered at Guadalupe Island, Mexico in 1954.

3. The restricted breeding area and overall distribution increases the vulnerability of Guadalupe fur seals to human disturbance through direct or indirect intrusion into these areas. Disruption of normal activities at both breeding and hauling out areas could adversely affect population growth.

4. *A. townsendi* is listed on Appendix I of the Convention on International Trade in Endangered Species (CITES). Such listed species are considered by CITES to be threatened with extinction; trade in the species or its products for commercial purposes is banned by Convention members.

5. The IUCN Red Data Book lists *A. townsendi* as vulnerable.

6. *A. townsendi* was listed pursuant to the Endangered Species Protection Act of 1966 as threatened with extinction. The omission of this species from a revised list published in 1970 (and subsequent lists) was without explanation.

The petition was reviewed by NMFS marine mammal biologists and managers as well as other personnel having knowledge and expertise concerning the Guadalupe fur seal. Based on these reviews, the Assistant Administrator for Fisheries, NMFS, determined that the petitior presented substantial information indicating that the petitioned listing of *A. townsendi* may be warranted. As required by the ESA and its regulations at 50 CFR Part 424, the NMFS conducted a review of the species status to determine whether or not it should be listed under the ESA (49 FR 4804; February 8, 1984). Information and comments received in response to the **Federal Register** Notice were considered in developing the status review.

Summary of Status Review

The Guadalupe fur seal was first described by Merriam (1897) from skulls collected on Guadalupe Island by C.H. Townsend. Disputes over the taxonomic status of the species were largely resolved by Repenning *et al.* (1971). Most investigators now accept the Guadalupe fur seal as a distinct species, *Arctocephalus townsendi*, the only member of the genus to reside in the northern hemisphere (King, 1983).

The Guadalupe fur seal is a small to medium sized (50–160 kg.) otariid (Fleischer, 1978). *A. townsendi* relies on a thick layer of fur for insulation from the cold surrounding marine environment; any soiling of the pelage layer is likely to result in physiological stress. Guadalupe fur seals come ashore to pup and breed during May–August; a single pup is produced per female. Virtually nothing is known about natality and mortality rates, food and feeding distribution, or genetics.

The distribution of Guadalupe fur seals prior to their exploitation is not well known. However, based on analyses of skeletal material exhumed from coastal middens of native Americans and sketchy accounts from early California explorers and sealers, the species may have ranged approximately from 18°N (Revillagigedo Islands—located about 300 miles south of Baja California, Mexico) to 37°N (Monterey Bay, CA). Breeding likely occurred in the California Channel Islands from San Miguel Island (Walker and Craig, 1978; Lyon, 1937) south to Guadalupe, the San Benitos and Cedros Islands, and perhaps as far south as Socorro Island (one of the Revillagigedo Islands). Although some have speculated that *A. townsendi* formerly occurred with abundance as far north as the Farallon Islands, CA (38°N), the evidence examined to date does not support this hypothesis.

Guadalupe fur seals are known to breed currently only on the eastern shore of Guadalupe Island (Peterson *et al.*, 1968; Fleischer, 1978; Pierson, 1978). A few non-breeding individuals have been observed hauled out at Pt. Bennett, San Miguel Island each year since 1969 during the breeding season; other individuals have been reported from San Nicolas and San Clemente Islands and a few widely scattered pelagic locations. Estimates of pre-exploitation population size range from 20,000 (Fleischer, 1978) to 200,000 animals (Hubbs, 1979). As the literature is grossly inadequate with regard to pre-exploitation levels, a sound estimate of the pre-exploitation population size cannot be made. However, it is likely that at the minimum the pre-exploitation population included at least 30,000 fur seals, based both on the size of the assumed habitat (accommodating 20,000 at Guadalupe Island and 10,000 elsewhere) and on the large numbers reported to be taken by 19th century sealing vessels.

During the early to mid-19th century, the islands off California and Mexico were visited frequently by fur sealers of various nationalities. The commercial hunting of the Guadalupe fur seal ended with its presumed extinction, even before it was scientifically described in 1897. The species was presumed extinct until 1926 when a small group was found and two individuals were collected from Guadalupe Island and delivered to the San Diego Zoo in 1928 (Townsend, 1928). It was again presumed extinct after the collector reportedly returned to the island and exterminated the remaining animals. The discovery of an adult male on San Nicolas Island in 1949 (Bartholomew, 1950) prompted several searches, resulting in the discovery of a herd of 14 animals on Guadalupe Island in 1954 (Hubbs, 1956 a, b). Since that time, sporadic expeditions have been made to census the population. Although there are considerable limitations associated with the survey techniques employed throughout recent years, the data indicate that the population is growing. Fleischer (1978) counted 1,073 animals at Guadalupe Island in 1977. A thorough foot census of the east side of Guadalupe Island conducted jointly by Mexican and U.S. scientists counted 1,597 *A. townsendi* in early August 1984. There is no indication that *A. townsendi* occurs in any abundance throughout the remainder of its historic range. Therefore, the 1984 count of about 1,600 animals is the best available scientific data and can be used as a valid estimate of the current minimum population size.

Additional detailed information may be obtained from the petition (CEE/SRF, 1983), the NMFS Status Review (Seagars, 1984), and other references cited at the end of this document.

Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending upon the species involved, shall, by regulation, determine if any species is endangered or threatened based upon any one or a combination of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; (5) or other natural or manmade factors affecting its continued existence. Section 4(b) of the ESA requires that such determinations are to be made "solely on the basis of the best scientific and commercial data available" and must take into account any efforts being made to protect the species under consideration. The factors and their relation to *A. townsendi* are discussed below.

(1) *The present or threatened destruction, modification or curtailment of the species habitat or range.* Habitat loss has not been the primary factor causing the reduced abundance of this species. However, actions that have been proposed within the species' range have the potential to modify or curtail portions of the habitat or range. Offshore oil and gas development activities are intensifying in central and southern California waters. Oil spills could affect individual fur seals in their pelagic habitat or on haulout areas at San Miguel and San Nicolas Islands. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout could adversely affect individual fur seals. Although the habitat in the Channel Islands area has a history of low level, chronic occurrence of oil from natural seeps in the vicinity, larger scale, or catastrophic oil spill events are not a typical component of the habitat.

The U.S. Air Force's Space Shuttle Program proposes to launch and return vehicles over the northern Channel Islands during the 1980's and 1990's. Over the ten year life of the program, a maximum of 7 launches are predicted to cause high intensity sonic booms over the northern Channel Islands, San Miguel Island in particular. The effects of these sonic booms are unknown at the present time. High intensity sonic booms are not a normal component of the habitat. Sonic booms of a lesser intensity may impact the islands from approximately 73 other launches and all returns. Any of these sonic booms could cause short-term disturbance to any individuals present.

These activities, particularly those with a potential for oil spills or high-intensity sonic booms, may adversely affect Guadalupe fur seals off Southern California. However, they are not likely to pose a threat to the continued existence of the population breeding on Guadalupe Island.

(2) *Overutilization for commercial, scientific, and educational purposes.* The orignial population size probably included at least 30,000 individuals. Commercial hunting for the fur of this species resulted in overutilization and its nearly complete eradication in the mid to late 19th centruy. Archeologic and historic evidence indicates that the species' former breeding range probably was from San Miguel Island, California, to Socorro Island, Baja California. Two specimens were collected for scientific and educational purposes in 1928 when it was unlikely that the population exceeded 60 individuals. Shortly after this time, all known remaining animals reportedly were harvested for furs sold in Panama. The current breeding distribution is likely restricted to the eastern shore of Guadalupe Island, this area is used by at least 1,600 animals. The long-term population growth rate most likely has been influenced by the repeated reductions in numbers, reduced genetic variability, or other unknown factors.

(3) *Disease or predation.* There is no information concerning disease or predation for this species.

(4) *Inadequacy of existing regulatory mechanisms.* Current regulatory mechanisms appear to be providing adequate protection of the species within areas subject to Mexican and U.S. jurisdiction. The Guadalupe fur seal has been protected under the provisions of the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361) since December 21, 1972. It is also listed on Appendix I to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) which prohibits trade for commercial purposes between signatory parties to the Convention. Although Mexico is not a party to the Convention, these prohibitions apply to trade with signatory nations. Listing of the Guadalupe fur seal pursuant to the ESA would provide it with additional protection through the section 7 consultation process.

(5) *Other natural or manmade factors affecting its continued existence.* The recent levels of human activities around Guadalupe Island have not prevented the continued increase in the population, and there is no evidence that human activities are increasing to levels that will halt the population's growth or threaten its continued existence. However, a potential exists for the expansion of several fisheries into waters adjacent to Guadalupe Island or the (as yet unknown) feeding grounds of *A. townsendi*. This could result in competition for food resources or the incidental taking of seals.

Discussion

Listing decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species relative to the criteria reviewed above. Of these, a decision to list *A. townsendi*, is best supported by evidence presented according to criterion (2)—"overutilization for commercial . . . purposes." However, the species is not currently being taken for commercial purposes and is protected from such taking by both Mexican and U.S. law. Therefore, given the apparent persistence of the species over the past 40 years and continued growth of the population, the NMFS does not find that the species is in danger of extinction throughout all or a significant portion of its range. However, despite the shortcomings of the available scientific data base, it is apparent that the population was reduced to and remains at a level where the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus the NMFS considers that listing this species as "threatened" under the provisions of the ESA is appropriate.

Therefore, the NMFS proposes to list *A. townsendi*, as a threatened species under the ESA. The list of threatened species under the jurisdiction of the NMFS, Department of Commerce, is contained in 50 CFR 227.4. If a final determination that *A. townsendi* is a threatened species is made, the NMFS will inform the Department of the Interior, which will add the species to the U.S. "List of Endangered and Threatened Wildlife" (50 CFR Part 17) as required by section 4(a)(2) of the ESA.

Delisting Criteria

The goal of the ESA is to provide for the recovery of listed populations to a point at which the protective measures of the ESA are no longer necessary. A species may be delisted on the basis of recovery if, after a review of the species status, it is determined that the species is neither endangered nor threatened (50 CFR 424.11(d)). Recovery of a listed population is judged relative to the general listing criteria (50 CFR 424.11(c)). For example, a population that was listed because of habitat degradation could be delisted when the habitat is restored and the population stabilized, or a population that was listed because of overutilization could be delisted when the use is curtailed and the population returns to a safe level.

The general criteria (50 CFR 424.11(c)) are vague, as they are designed to apply to a broad range of species and situations. This makes evaluating the recovery of a species difficult and contributes to making the delisting process cumbersome. Therefore, the NMFS is proposing specific criteria for the Guadalupe fur seal that can be evaluated with data from a long term monitoring program. Each of the criteria proposed can be evaluated independently. When one or more of the criteria is attained, the NMFS would initiate a status review to determine whether the Guadalupe fur seal should be delisted.

The specific criteria proposed are: (1) Growth to a population size of 30,000 animals, (2) establishment of one or more additional rookeries within the historical range, and (3) growth to the level at which maximum net productivity of the population occurs. The estimated minimum size of the pre-exploitation population is 30,000 animals (Seagars, 1984). The NMFS believes this would be a reasonable indication of recovery from the effects of exploitation that occurred during the last century.

The establishment of additional breeding colonies within the historic range provides an indication of recovery, because it implies population growth. Establishment of a grographically isolated breeding site reduces the potential for adverse affects on a population due to a localized catastrophic event or human interactions, thereby diminishing the need for the protective measures of the ESA. Therefore, the NMFS proposes to use the establishment of one or more additional rookeries within the historical breeding range as a criterion for measuring recovery.

The maximum net productivity level (MNPL) is as definitive point in the dynamics of a recovering population. The growth rate of the population begins to decrease at the MNPL as density dependent factors begin to operate. A qualitative determination that a population has passed the point at which the MNPL occurs can be made by monitoring the rate of population growth over time. A population above its MNPL is resilient and can respond to reductions (e.g. from an incidental take) by increasing productivity. This resiliency provides some protection to the population, and may indicate that the protective measures of the ESA are not necessary. Therefore, NMFS proposes to establish the MNPL of the Guadalupe fur seal population as a criterion for assessing recovery. If the NMFS long-term population monitoring program indicates that the population is above its MNPL, the the NMFS will initiate a status review.

The NMFS thinks that establishing specific criteria for assessing the recovery of a population at the time it is listed will facilitate monitoring the recovery of the population and make the delisting process, if warranted, less cumbersome. However, meeting one or all of the delisting criteria does not mean that the NMFS will propose delisting the species, but rather that the NMFS will conduct a status review. If, based on the status review, the NMFS determines that the species is neither threatened nor endangered, then it will propose to delist the species.

Critical Habitat

Critical habitat is defined as "the specific areas within the geographical area occupied by the species . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection" and "specific areas outside the geographical area occupied by the species . . . upon a determination . . . that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). The 1982 amendments to the ESA provide, in section 4(a)(3), that the Secretary shall designate critical habitat, to the maximum extent prudent and determinable, concurrent with listing a species as endangered or threatened. The criteria for designating critical habitat are set forth in § 424.12 of the regulations which implement section 4 of the ESA (50 CFR Part 424; 49 FR 38900; October 1, 1984). Those regulations state that "Critical Habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction" (50 CFR 424.12(h)).

Guadalupe fur seals are known currently to breed only on Guadalupe Island in Mexico. Food habits have not been studied and foraging habitat has not been defined. A few non-breeding individuals have been observed on San Miguel Island each year since 1969 during the breeding season; and, individuals have been sighted sporadically at San Nicolas and San Clemente Islands and few widely scattered pelagic locations. However, these areas are not known to be used for activities essential to the conservation of the species and are occupied only by a very small number of non-breeding individuals.

The NMFS finds that currently the only areas that meet the definition for critical habitat are outside of U.S. jurisiction. Therefore, no critical habitat designation is being proposed. If information indicates that any area within the U.S. is essential to the conservation of the species and may require special management considerations or protection, the NMFS will then consider a critical habitat designation. For example, if the breeding habitat in Mexico is degraded by environmental change or an increase in human activities, if *A. townsendi* begins to breed or pup on the California Channel Islands, or if important foraging habitat is identified, then the NMFS wil determine if critical habitat should be designated.

Research

Under the authority of Section 108 of the MMPA, the NMFS has informally cooperated with the Government of Mexico in marine mammal scientific research programs that can be continued or expanded. A cooperative research program with the Government of Mexico would facilitate research into various aspects of population dynamics and life history of the Guadalupe fur seal through cooperation in funding, personnel, and shared expertise. This information would provide a sound basis for management throughout the species range. These projects may include: A review of historical sealing records (logbooks); periodic surveys designed to assess the population status throughout the range of the species on a consistently repeatable basis; description of natality and mortality rates; identification of food habits and distribution of feeding grounds; development of models used to assess population trends and status; and the monitoring of potential actions which could adversely affect the population—such as disturbance of fishery interactions.

Technical Amendment

Section 227.71 of Subpart D—Threatened Marine Reptiles is also proposed to be amended to clarify that this section applies only to threatened species of sea turtles. Section 227.71 refers to all threatened species enumerated in § 227.4, which at this time includes only sea turtles. Therefore, this is not a substantive change.

Comments Requested

The NMFS is soliciting information and comments on this porposed rule. In making a final determination concerning the listing of *A. townsendi*, the NMFS will take into account the data, views, and comments received during the comment period.

Classification

The NOAA Directives Manual 02-10 (49 FR 29644-29657; July 23, 1984) implementing the National Environmental Policy Act (NEPA), categorically exclude listing actions under section 4(a) of the ESA from the environmental assessment and environmental impact statement requirements of NEPA.

As noted in the Conference report on the 1982 amendment to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, are not applicable to the listing process.

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List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife, Exports, Fish, Import, Marine mammals, Transportation.

Dated: December 21, 1984.

Carmen Blondin,

Deputy Assistant Administrator for Fishery Resource Management.

For the reasons set out in the preamble, Part 227 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation to Part 227 reads as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.4 of Subpart A is amended by adding a new paragraph (d) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

3. A new Subpart B is added to read as follows:

Subpart B—Threatened Marine Mammals

§ 227.11 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of Section 9 of the Act (16 U.S.C. 1538) relating to endangered species shall apply to the Guadalupe fur seal except as provided in § 227.11(b).

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.11(a) in accordance with and subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to insure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Regional Director.

4. Section 227.71 of Subpart D is amended by revising the first sentence to read as follows:

§ 227.71 Prohibitions.

Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4:

* * * * *

[FR Doc. 85-55 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 2
Thursday, January 3, 1985

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

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the first calendar quarter of 1985.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202–382–9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 19, 1984, Headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the first calendar quarter of 1985 is 21.57 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the first calendar quarter of 1985 has been calculated to be 21.2825 cents per pound. This results in a fee of 0.2875 cent per pound for item 956.15, since the adjusted average spot price is less than 21.57 cents. Accordingly, the fee for items 956.05 and 957.15 for the first calendar quarter of 1985 is 1.2875 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Commissioner of Customs and file notice thereof with the Federal Register prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the first calendar quarter of 1985 shall be as follows:

Items	Fee
956.5	1.2875 cents per lb.
956.15	0.2875 cent per lb.
957.15	1.2875 cents per lb.

The amounts of such fees have been certified to the Commissioner of Customs in accordance with paragraph (c)(v) of Headnote 4.

Signed at Washington, D.C., on December 27, 1984.

John B. Crowell, Jr.,
Acting Secretary of Agriculture.

[FR Doc. 84-34011 Filed 12-28-84; 1:34 pm]

BILLING CODE 3410-10-M

Forest Service

Nezperce National Forest Grazing Advisory Board; Meeting

The Nezperce National Forest Grazing Advisory Board will meet at 10 a.m., January 29, 1985, at the Elks Lodge in Grangeville, Idaho.

The purpose of the meeting is to discuss range betterment funds and review allotment management plans.

The meeting is open to the public. Comments and discussion from the public may be introduced after agenda items have been covered.

Tom Kovalicky,
Forest Supervisor.

December 21, 1984.

[FR Doc. 85-117 Filed 1-2-85; 8:45 am]

BILLING CODE 3410-11-M

Lewis and Clark National Forest Grazing Advisory Board; Meeting

The winter meeting of the Lewis and Clark National Forest Grazing Advisory Board is scheduled for 10:00 a.m. Tuesday, January 22, 1985 at the Sheraton, 400 10th Ave. So., Great Falls, MT. in the Board Room. The meeting will start with a review of the revised proposed Forest Plan for the Lewis and Clark National Forest, and a slide program on improving range with prescribed fire. A no host luncheon will follow at 11:30 a.m. The business meeting will follow the luncheon.

The purpose of the business meeting is to review the Lewis and Clark National Forest's range management program for fiscal year 1985 and to make recommendations to the Forest Supervisor. The Forest's proposal to reevaluate the noxious weed program for 1985 will be discussed at the meeting. Discussion will also be held on other topics of interest to the Board.

The meeting will be open to the public. Persons who wish to attend should notify George P. Raths, Chairman

of the Board, P.O. Box 478, Roundup, Montana 59072, Phone 323–1084, or Wayne Phillips, Acting Secretary, Lewis and Clark National Forest, Box 871, Great Falls, Montana 59403, phone 406–727–0901. Written statements may be filed with Board before or after the meeting.

Dated: December 20, 1984.

William K. Duryee,

Acting Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 85–113 Filed 1–2–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 283]

Resolution and Order Approving the Application of the Midlothian Trade Zone Corporation for a Foreign-Trade Zone in Ellis County, Texas; Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Midlothian Trade Zone Corporation, a Texas non-profit corporation associated with the City of Midlothian and the Chamber of Commerce, filed with the Foreign-Trade Zones Board (the Board) on May 7, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Ellis County, Texas, adjacent to the Dallas/Ft. Worth Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant

To Establish, Operate, and Maintain a Foreign-Trade Zone in Ellis County, Texas, Adjacent to the Dallas/Ft. Worth Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Midlothian Trade Zone Corporation (the Grantee), a Texas non-profit corporation associated with the City of Midlothian and the Midlothian Chamber of Commerce, has made application (filed May 7, 1984, Docket No. 25–84, 49 FR 20747) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Ellis County, Texas, adjacent to the Dallas/Ft. Worth Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 113 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 21st day of December, 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–100 Filed 1–2–85; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–351–406]

Extension of the Deadline for a Preliminary Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil

AGENCY: Import Administration, International Trade Admininstration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is extending the deadline for its preliminary determination in the countervailing duty investigation of certain agricultural tools from Brazil in order to investigate upstream subsidies provided to agricultural tillage tool producers in Brazil through subsidies to the Brazilian steel industry. On December 14, 1984, petitioners presented information which establishes a reasonable basis to believe or suspect that an upstream subsidy is being paid or bestowed on the products under

investigation. Under section 703(h) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984 (the Act), we may extend the deadline for a preliminary determination to 250 days after the filing of a petition whenever there is a reasonable basis to believe or suspect that an upstream subsidy is paid or bestowed and additional time is required to investigate the upstream allegation. The Department concludes that such additional time is required and will make its preliminary determination by June 4, 1985.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Telephone: (202) 377–3530 (LaCivita) or (202) 377–5414 (Kane).

SUPPLEMENTARY INFORMATION:

Case History

On September 28, 1984, we received a petition filed by Ingersoll Products Corporation, Empire Plow Company, Inc., and Nichols Tillage Tools, Inc., three major domestic agricultural tillage producers which comprise the U.S. domestic industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure of threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on October 18, 1984, we initiated such an investigation (49 FR 42971). We stated that we expected to issue a preliminary determination by December 22, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 13, 1984, the ITC preliminarily determined that there is a reasonable indication that these imports threaten material injury to a U.S. industry (49 FR 45935).

We presented a questionnair concerning the allegations to the government of Brazil in Washington, D.C. on October 28, 1984. On December 6, 1984, we received a response to that questionnaire.

Upstream Subsidy Allegation

In the petition, petitioners alleged that Brazilian producers, manufacturers and exporters of certain agricultural tillage tools receive an "upstream subsidy" through the purchase of subsidized inputs of carbon steel plate, sheet, strip and bar. In our notice of intitation, we stated that the upstream subsidy allegation was insufficient to initiate an investigation because it neither alleged nor provided any evidence that the Brazilian manufacturers of certain agricultural tillage tools were related to Brazilian producers of carbon steel or that transactions between these parties were conducted on other than an arm's-length basis.

On November 7, 1984, petitioners requested the Department to re-examine the upstream subsidy allegation in light of the provisions of the Trade and Tariff Act of 1984, enacted on October 30, 1984.

On December 5, 1984, the Department requested that petitioners provide further information to support their allegation. Petitioners responded on December 14, 1984. In consideration of the information received, we determine that there are reasonable grounds to believe or suspect that an upstream subsidy is paid or bestowed on the products under investigation.

Under Section 703(h) of the Act, we may extend the deadline for a preliminary determination to 250 days after the filing of a petition whenever the Department determines that additional time is required to investigate an upstream subsidy allegation. Accordingly, we intend to make our preliminary determination on or before June 4, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–101 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–405]

Preliminary Affirmative Countervailing Duty Determination; Certain Textile Mill Products From Mexico and Recission of Initiation With Respect to Certain Articles of Sisal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products. The estimated net bounty or grant is 11.0 percent *ad valorem* for textile mill products. We are directing the U.S. Customs Service to suspend liquidation of all entries of textile mill products from Mexico, except those subject to exclusion, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in an amount equal to the estimated net bounty or grant. In addition, we rescind our notice of initiation of investigation with respect to certain articles of sisal.

This investigation was initiated by the Department under the title "Certain Textiles and Textile Products from Mexico." Because of the number of products covered, and the potential for confusion of non-apparel textile products with apparel, we are changing the title of this investigation to "Certain Textile Mill Products from Mexico." The scope of this investigation remains textiles and textile products, as announced in the initiation, with two exceptions, polypropylene fibers and certain articles of sisal, discussed below. If this investigation proceeds normally, we will make our final determination by March 8, 1984.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–0160 or 377–1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products. For purposes of this investigation, the following programs are preliminarily found to confer a bounty or grant:

- FOMEX
- CEPROFI
- FONEI
- FOGAIN

We estimate the net bounty or grant to be 11.0 percent *ad valorem* for textile mill products.

Case History

On July 24, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textile mill products. In compliance with the filing requirements of §355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Mexico of textile mill products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on August 13, 1984, we initiated this investigation (49 FR 32894). We stated that we expected to issue a preliminary determination by October 17, 1984. On September 21, 1984, we determined this investigation to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 65 days until December 21, 1984 (49 FR 40198).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of this investigation, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Mexico in Washington, D.C., on August 24, 1984. The government of Mexico identified exporters who account for 85 percent of the textile mill products exported to the United States. We requested responses from all 26 "major exporters" to our detailed company questionnaire. On October 26, 1984, we presented the detailed government and company questionnaires to the government of Mexico in Washington, D.C. The responses to our detailed questionnaires were received on December 3, 1984.

We received timely requests for exclusion from nineteen companies. Two of those do not produce or export the products under investigation and are therefore outside the scope of this investigation. Of the remaining seventeen, six companies were among the 26 major exporters and were given detailed questionnaires. We received responses from these companies, which indicated that none of the six receives countervailable benefits above *de minimis*. These companies, which are listed in the "Suspension of Liquidation" section of this notice, are preliminarily excluded.

We have requested that the other eleven companies respond to the countervailing duty questionnaire. If they respond and have received no or *de minimis* bounties or grants, we will exclude these firms from our final countervailing duty determination. Because we have not yet received any information on these eleven firms on which to base a determination that they have received no benefits, we are not exclusing them at this time.

Certain respondents in the *Certain Textile Mill Product and Apparel* investigations have raised the issue as to whether petitioners have standing to file these cases. We have addressed this issue in our preliminary determination of *Certain Textile Mill Products and Apparel from Indonesia*, published on December 21, 1984. See that determination notice for our comments on the issue of petitioners' standing with respect to textile mill products. In that notice we stated that the unions ACTWU and ILGWU have standing with respect to apparel, but not with respect to textile mill products. This investigation involves textile mill products only, as apparel items were not included in the petition against Mexico. Therefore, the unions have no standing in this investigation and are no longer considered petitioners or interested parties.

Scope of the Investigation

The products covered by this investigation are certain textile mill products, which are described in the Appendix attached to this notice.

We included yarns of polypropylene fibers in our notice of initiation of this investigation, but we are now excluding them from this determination and from the scope of the investigation. These yarns are classifiable under the following items of the *Tariff Schedules of the United States Annotated:* 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038, and 310.8000. Imports of these yarns are already subject to a suspension agreement, which suspended a previous countervailing duty investigation. This agreement was recently approved for continuation in the preliminary results of an administrative review (49 Fed. Reg. 39890). Inquiries or comments regarding the suspension agreement on yarns of polypropylene fibers should be addressed to the Office of Compliance of the Import Administration, International Trade Administration.

Determinations on Rescission of This Investigation With Respect to Chemical Fibers and Certain Articles of Sisal

Mexican producers of chemical fibers and certain articles of sisal have requested that the Department rescind its notice of initiation and terminate this investigation as to the respective products they manufacture. These producers argue that the petitioners do not produce "like products," and therefore petitioners lack standing to file a countervailing duty petition against these products. Under the Act, "termination" is a term of art which, in an investigation initiated upon the basis of a petition, generally refers to situations in which a petitioner withdraws its petition. Here, the petitioners have not withdrawn their petition. Nonetheless, the U.S. Court of International Trade has held that the Department may rescind an initiation of an investigation where the Department subsequently discovers that the petitioner lacks standing. *Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670 (1984). Thus, the Department has the authority to rescind its initiation in this case should it determine that petitioners lack standing with respect to chemical fibers and articles of sisal.

Under section 702(b)(1) of the Act, in order to having standing to file a countervailing duty petition, a petitioner must be a domestic interested party within the meaning of sections 771((9)(C), (D), or (E) of the Act and must file the petition on behalf of an industry in the United States. The definition of "like product" is relevant to the definitions of domestic party and industry and is defined in section 771(10) of the Act as:

> . . . a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

If a "like product" is not produced in the United States, a potential petitioner would not have standing to file a countervailing duty petition.

The Mexican producers of chemical fibers argue that petitioners do not produce chemical fibers or "like products," and therefore do not have standing with respect to chemical fibers. Originally, Figras Quimicas and Nylon de Mexico claimed that ATMI members produced only finished yarns, and not the "raw good" which respondents claim chemical fibers to be. ATMI

subsequently submitted information detailing the types of man-made yarns produced by the eight ATMI members who are now considered to be petitioners. At least two of the eight companies produce synthetic yarn in each category examined by the Department. The Mexican producers dispute this as a basis for standing, because they claim that the eight do not sell chemical fibers, which are filaments of nylon and polyester. The eight companies may produce these fibers, they allege, but the fibers are consumed by the textile companies themselves and are never sold to outside buyers. The only companies which both produce and sell chemical fibers are chemical companies, rather than textile companies, according to respondents.

These arguments raise sufficient questions about the status of petitioners with regard to chemical fibers to warrant a close examination of whether they produce a "like product." Petitioners have stated that they produce man-made yarns which are like the chemical fibers produced by the Mexican companies. The so-called "chemical fibers," they contend, are acutally yarns. These fibers enter the United States under a TSUSA item number for yarn, 310, while fibers have a different TSUSA number. Respondents counter this argument with a reference to *Typewriters from Japan* (Final Results of Administrative Review of Antidumping Duty Order, 48 FR 7768, 7770), in which the Department took the position that TSUSA categories alone are not dispositive of the scope of an investigation. While we agree that the TSUSA item numbers alone do not define the scope of an investigation or a "like product" determination, we are not convinced that what the petitioners produce is not a "like product" to chemical fibers produced by the Mexican repsondents.

Petitioners produce yearns of man-made fibers, and we have insufficient evidence to determine that chemical fibers do not compete with these yarns. Respondents have maintained that the chemical fibers that they produce are raw materials, and yet they have stated that further processing of the fibers is *usually* required before they can be used by the textile industry. That processing may include the dyeing of the fibers, which does not appear to be a significant alteration. The fibers are also continuous filaments, which enter the United States on large spools. They do not seem comparable to other raw materials such as lamb's wool or raw cotton, as has been alleged. In addition, imports to the United States under these various TSUSA numbers are considered textile products rather than chemical products under the textile bilateral agreements, and under the General Agreement on Tariffs and Trade (GATT) "Arrangement Regarding International Trade in Textiles."

As to the question of whether the textile companies actually sell yarns of man-made fibers, section 771(9)(C) requires only that an "interested party" manufacture, produce, or wholesale the merchandise subject to an investigation. The eight companies therefore appear to satisfy that requirement. However, we recognize that the standing requirements for filing a petition under the statute were intended to encompass only those parties which an actual stake in the outcome of an investigation, according to the legislative history. (See S. Rep. No. 96–249, 96th Cong., 1st Sess. 47). We therefore invite further information and comments on that issue.

The government of Mexico and the Mexican chemical fiber manufacturers have also alleged that the petition was not filed "on behalf of" the industry producing their product, pursuant to section 702(b)(1) of the Act. They contend that the domestic industry in chemical fibers is represented by the Man-Made Fiber Producers Association (MMFPA), which purportedly does not support the petition. However, we received a letter on November 14, 1984, from Robert Umphrey on behalf of the MMFPA stating that the association supports the petition, and that their members account for 90 percent of the man-made fiber produced in the United States. While we do not agree that the industry in this product is limited to producers of man-made fiber, this constitutes sufficient evidence that the petition was filed on behalf of American producers of man-made fiber.

The government of Mexico and one Mexican company, Cordemex, have objected to the inclusion of sisal products in this petition. The petition included sisal cordage (rope), sisal cloth suitable for buffing and polishing, sisal insulator padding, and woven sisal used as a floor and wall covering, and the Department initiated this investigation including these products. The basis for the objection to the inclusion of these products is the allegation that petitioners do not produce "like products", and are therefore not "interested parties" or proper petitioners as to these products. With regard to sisal cordage, an association of American rope manufacturers opposed the petition, raising the question of whether it had been brought on behalf of the industry.

The petition was amended to exclude sisal cordage and sisal cloth as described above, in letters to the Secretary of Commerce on October 23 and October 29. These amendments were accepted and these products have been excluded from the scope of this investigation. Sisal insulator padding and woven sisal have not been deleted from the petition by petitioners and thus the question of standing with respect to these two products has not been resolved. The only remaining standing issue is whether the eight textile companies now considered petitioners produce "like products."

Cordemex argues that sisal insulator padding and woven sisal have certain properties and characteristics which distinguish them from products produced by the petitioners, to such an extent that petitioners' products cannot be considered "like" the articles of sisal.

Respondents have presented sufficient information to warrant a separate "like product" determination as to these two products. ATMI contended that its members produce insulator padding and floor and wall coverings which compete with sisal insulator padding and woven sisal and that therefore they produce "like products." The eight companies admit that they do not produce products of sisal or other vegetable fiber, but contend that "woven fabrics of man-made fiber are competitive with and 'like' woven sisal" and "batting of man-made fiber is 'like' sisal batting." Petitioners produce those articles of man-made fiber. Cordemex counters that "*no* product made in the United States corresponds to *any* product sold by Cordemex to the United States."

We received sufficient information regarding the special qualities of these products to warrant requiring petitioners to demonstrate that the products they produce also have these special qualities. Several U.S. purchasers and distributors of woven sisal wrote to us stating that woven sisal is of a higher quality, more expensive, and is more appealing to buyers of the product than wall and floor coverings produced in the United States. An examination of woven sisal confirmed its distinct characteristics. The eight petitioners have stated only that they produce woven fabrics of man-made fiber, without clarifying whether the fabrics are used as wall and floor coverings, and without providing information on the characteristics of these fabrics. Given the evidence that woven sisal has qualities that distinguish it from most floor and wall coverings, and the fact that it is not used as a fabric, this lack of information constitutes a failure to show

that petitioners have standing with respect to woven sisal.

Cordemex has argued that sisal insulator padding also has distinct characteristics which make it "unlike" other padding materials. Sisal insulator padding is used in making "mattresses and upholstered furniture, as padding between the inner springs and the mattress cover or upholstery fabric." This material is unique, Cordemex contends, because of its fiber content, durability, price, and performance characteristics. Cordemex alleges that no "like product" is produced in the United States.

We find it unnecessary to reach the question of whether this padding is unique. Petitioners have contended only that they produce batting, which is allegedly "like" sisal "batting." "Batting" is defined as "layers or sheets of raw cotton or wool used for lining quilts or for stuffing or packaging," according to *Webster's New Collegiate Dictionary*, at 95, copyright 1977. Batting is therefore used for a different purpose than sisal insulator padding and the two products are not interchangeable. One would not imagine lining a quilt with coarse, unyielding sisal insulator padding. We therefore determine that batting is not a "like product" to sisal insulator padding and petitioners are not "interested parties" with respect to this product.

We are not prepared to determine that no "like products" are produced in the United States with respect to sisal insulator padding and woven sisal, based upon the evidence presented to us at this time. However we agree with respondents that petitioners have failed to demonstrate that what they produce is "like" the articles of sisal, and we hereby rescind the initiation of this investigation as to sisal insulator padding, TSUSA 355.0400, and woven sisal, TSUSA 361.5660.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. Thse principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to all allegation denies the existence of a program, receipt of benefits under a program, or eligibility of e company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subect to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition and the response to our questionnaires, we preliminarily determine the following:

I. Programs Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products under the following programs.

A. Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)

FOMEX is a trust of the Secretaria de Hacienda y Credito Publico to promote the manufacture and sale of exported products with the Bank of Mexico acting as the trustee. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade. The National Bank for Foreign Trade administers the financing of FOMEX pre-export and export loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters.

During the period for which we are measuring bounties or grants, exporters could obtain FOMEX pre-export loans denominated in pesos with a maximum nominal annual interest rate of 10 percent, or export loans denominated in dollars with a maximum annual interest rate of 6 percent. According to the government of Mexico's response, companies under investigation received both pre-export peso-denominated FOMEX loans and export dollar-denominated FOMEX loans to finance exports to the United States during the period under investigation.

Because the FOMEX pre-export financing program provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of certain textile mill products.

We used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. In this case, we chose as our benchmark the average of the nominal rates published monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate). This rate is the weighted average of the rates charged by commercial banks on peso loans.

Since FOMEX export loans also allow exporters to obtain loans for export-related purposes at interest rates less than those for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of certain textile mill products. For FOMEX export loans denominated in dollars we uses as our benchmark the prime rate charged by banks on short-term business loans in the United States, as published in the *Federal Reserve Bulletin*. This rate if the weighted average of the rates charged by commercial banks in the United States. We determined the benefits from these loans based on the interest rate differential between FOMEX financing and comparable commercially available loans. Because these loans are U.S. export-related, we allocated the benefit received over the companies' total exports to the United States during the review period. On this basis, we calculated a bounty or grant in the amount of 3.7 percent *ad valorem*.

B. Preferential Federal Tax Credits (CEPROFI)

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms. CEPROFI tax credits are granted for investments in plant and equipment and for certain payments relating to increased employment and wages. The value of the tax credits is established as a percentage of the investment made. Certain types of investments receive tax credits at higher percentages than do others.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay Mexican federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the Diario Official de la Federacion (Diario Oficial) on March 6, 1979,

requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant as defined by section 771(6)(A) of the Act.

According to the government of Mexico's response, certain textile mill exporters were authorized to receive CEPROFIs for increased employment and for investment in equipment and buildings. Because these types of CEPROFIs are limited to a specific group of industries or to companies located in specific regions, we determine that these CEPROFIs confer a bounty or grant.

We allocated the amount of CEPROFI benefits received (based on CEPROFIs which were received during the period of investigation) over the companies' total FOB sales of all products. On this basis we calculated a bounty or grant of 2.1 percent *ad valorem*.

C. FONEI

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion, or modernization of enterprises in order to foster industrial decentralization and promote the efficient production of goods capable of competition in the international market. FONEI loans are available under various programs having different eligibility requirements.

The response of the government of Mexico stated that the firms under investigation received FONEI loans for investment in equipment. FONEI loans for investment in equipment are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans are limited to particular geographic regions and are made at below market rates, we determine that FONEI loans for investment in equipment confer a bounty or grant upon respondents. Because the interest rates on the FONEI loans under review are subject to change and have changed over the life of the loans, we treated these loans as a series of short-term loans. To evaluate the benefit of these loans, we compared the cost of the FONEI loans with the cost of commercially available loans bearing an interest rate equivalent to the nominal IE rate. We then divided the amount of the benefit (i.e., the difference in the cost of the two loans) by the total sales of the companies for the period. In this manner, we calculated a benefit of 2.27 percent *ad valorem* for FONEI loans.

D. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)

FOGAIN is a program that provides financing at interest rates below prevailing commercial rates to all small- and medium-sized firms in Mexico. Interest rates vary depending upon whether a small- or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial growth.

We determine this program to be countervailable to the extent it provides financing on terms inconsistent with commercial considerations on the basis of priority status granted to certain small- and medium-sized businesses and/or on the basis of the location for firms in particular zones. Without these conditions which limit the availability of the program, FOGAIN would not be countervailable, because all small- and medium-sized firms in Mexico are eligible to receive FOGAIN loans at the least beneficial interest rate available under the program. Thus the program is countervailable to the extent that the interest rate received by a small- or medium-sized firm is below the least beneficial rate which that firm can receive under FOGAIN.

Because the interest rates on these loans are subject to change and have changed over the life of the loans, we treated these loans as a series of short-term loans. To determine the estimated bounty or grant, we used as our benchmark the least beneficial interest rate that would have been available under FOGAIN. We computed annual interest costs based on the outstanding balance of each loan, first at the preferential rate, then at the benchmark rate. We determined the amount of the bounty or grant to be the difference in the interest costs so calculated. We allocated the benefit amount over total sales for the period. On this basis we calculated a bounty or grant of 3.2 percent *ad valorem*.

II. Programs Preliminary Determined Not To Be Used

We preliminary determined that the following programs have not been used by the companies that manufacture, produce, or export textile mill products in Mexico. Unless otherwise indicated, the basis for these determinations is the Mexican government's statement that the responding manufacturers, producers, and exporters of certain textile mill products did not receive benefits under these programs.

A. Export Credit Insurance

Under this FOMEX program, exporters are granted insurance credit against expropriations, defaults and other political risks. Petitioners allege that FOMEX premiums are inadequate to cover the long-term operating risks of the program and that these programs may offer subsidies to exporters.

B. Accelerated Depreciation

Companies may benefit from accelerated depreciation based on their status as a priority industry or their location in specific regions of the country.

C. NAFINSA

Companies in priority areas may receive certain countervailable loans at preferential interest rates through NAFINSA and they may receive additional benefits from the following trusts administered by NAFINSA:

a. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN).

b. National Preinvestment Fund for Studies and Projects (FONEP).

D. Energy Subsidies

The Mexican government provides subsidies for electrical, fuel and petrochemical costs of firms locating or expanding in certain zones of the country. Petitioners allege that certain textile mill producing companies may receive benefits from these energy subsidies.

E. Import Duty Reductions and Exemptions

Certain companies producing textile mill products may recieve import duty reductions or exemptions on imported machinery and equipment to be used in manufacturing exported products, based on export performance and location within priority zones.

F. Foreign Currency Financing of Imports

PROFIDE, under the auspices of FOMEX, provides exporters with access to foreign exchange at preferential officially-controlled rates to purchase imports.

G. BANCOMEXT

Bancomext provides financing for capital investment production costs and importation of raw materials for the manufacture of exports.

H. Preferential State Investment Incentives

Certain Mexican states offer Mexican industries partial or total exemption from state taxes, free or low cost land,

or certain local infrastructure improvements as incentives for establishing or expanding industrial facilities or as incentives for exporting.

I. Article 94 Loans

Under section II of articles 94 of the General Law of Credit Institutions and Auxiliary Organizations, the Bank of Mexico provides preferential loans to exporters for the financing of manufactured products and the production and/or inventory of goods produced in Mexico for export. Petitioners allege that textile mill products companies may benefit from these export subsidies.

J. Fondo Nacional de Fomento Industrial (FOMIN)

FOMIN operates as a trust fund, providing funding to certain small and medium sized companies by either buying stock or providing loans at below market rates.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified in our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain textile mill products from Mexico which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except those excluded, and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Product	Ad valorem rate (percent)
Textile Mill Products	11.9

Imports of the subject merchandise from the following companies are excluded from this determination: Fibras Quimicas, S.A. Nylon de Mexico, S.A., TEXEL, S.A. de C.V., Finofil, S.A., Terza, S.A., and Lycratex, S.A. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 on February 5, 1985, at the U.S. Department of Commerce, room 1530, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in a least 10 copies must be submitted to the Deputy Assistant Secretary by January 28, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix

List of TSUSA codes which covered Mexico's exports of certain textile mill products to the United States in 1983.

A. Textile Mill Products

Yarns

300.6020	300.6024	300.6028	301.0000	301.1000	301.2000
301.3000	302.0024	302.1024	302.1028	302.2020	302.2024
302.2026	302.2028	302.3024	302.3026	302.3028	302.4026
303.2040	303.2042	307.6810	310.0106	310.0109	310.0110
310.0114	310.0130	310.0149	310.0150	310.0206	310.0209
310.0230	310.0249	310.0250	310.0270	310.0510	310.1015
310.1070	310.1109	310.1150	310.1170	310.2150	310.4027
310.4047	310.4050	310.5046	310.5047	310.5049	310.6034
310.9000	310.9120	310.9140			

CORDAGE

316.5500	316.5800	316.7000	319.0300	319.0700	

Fabric

320.0002	320.0036	320.0088	320.0092	320.0094	320.1002
320.1044	321.1046	322.0002	322.1044	322.1064	322.1072
322.1084	322.2026	322.4094	322.5026	322.5028	322.8028
322.9094	324.2092	324.8090	325.1064	325.8092	327.2092
327.3094	328.2092	328.2094	331.2092	336.1540	336.6251
336.6253	336.6257	338.4004	338.5007	338.5009	338.5010
338.5013	338.5021	338.5024	338.5032	338.5036	338.5041
338.5045	338.5046	338.5049	338.5064	338.5065	338.5069
339.1000					

Special Construction Fabrics

345.5053	345.5055	345.5057	345.5073	345.5075	335.5077
346.6050	346.6065	346.7000	347.6040	347.6800	348.0065
351.3000	351.5010	351.5060	351.6010	351.7060	351.8060
351.9060	352.2060	352.8010	352.8060	353.1000	353.5012
353.5052	355.1800	355.2500	355.4530	355.8100	356.2510
357.4500	357.7010	357.8060	358.0290	358.0690	358.1400
358.3500	358.5040	359.1010	359.1030		

Textiles Furnishings

360.0600	360.1515	360.2500	360.4225	360.4335	360.4825
360.4835	360.7000	360.7800	360.7900	360.8300	360.8400
361.0530	361.0540	361.2410	361.4200	361.4500	361.4800
361.4800	361.5420	361.5426	361.5610	361.5650	363.0510
363.0515	363.1020	363.1040	363.2000	363.2562	363.2564
363.2575	363.2580	363.2590	363.4500	363.6030	363.6540
363.8512	363.8515	363.8525	363.8545	363.8550	363.8555
364.0500	364.1300	364.1800	364.2000	364.2300	364.2500
363.3000	365.5060	365.7815	365.7825	365.7865	365.8400
365.8610	365.8620	365.8640	365.8660	365.8670	365.8680
366.1820	366.2460	366.2480	366.4200	366.4800	366.4700
366.5100	366.7700	366.7925	366.7930	366.8400	367.3424
367.3428	367.6025	367.6440	367.6080		

[FR Doc. 85-102 Filed 1-2-85; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-021]

Antidumping Duty Order; Cell Site Transceivers From Japan

AGENCY: International Trade Administration; Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning cell site transceivers from Japan the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that cell site transceivers from Japan are being sold at less than fair value, and that sales of cell site transceivers from Japan are materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" did exist with respect to cell site transceivers from Japan, the ITC found that "critical circumstances" did not exist. Therefore based on these findings, all unliquidated entries, or warehouse withdrawals for consumption of cell site transceivers and related subassemblies from Japan, made on or after June 12, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse for consumption, made on or after the date of publication of this antidumping duty order in the Federal Register.

Since the ITC made a negative determination regarding "critical circumstances" under section 735(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(b)(4)(A), the suspension of liquidation previously ordered 90 days retroactive from the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the Federal Register, is no longer in effect. Therefore Customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security and refund any cash deposit and liquidate all entries or warehouse withdrawals for consumption of cell site transceivers and related subassemblies from Japan made before June 12, 1984.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is cell site transceivers and related subassemblies which are currently classifiable under item number 685.2976 of the *Tariff Schedules of the United States Annotated*. Both cell site transceivers and related subassemblies are subject to antidumping duties pursuant to this order. Respondent Kokusai has questioned whether such subassemblies fall within the scope of our preliminary and final determinations, as the "Suspension of Liquidation" section of each notice omitted reference to subassemblies. We have notified the Customs Service to clarify that subassemblies are subject to suspension of liquidation under the same terms as cell site transceivers. The scope of this investigation, as determined by the petition and the Department, has always included related subassemblies, and the notices have reflected this. We intended that the term "cell site transceivers" include related subassemblies in our published "Suspension of Liquidation" directions.

Kokusai has only recently argued that related subassemblies are in a separate "class or kind" of merchandise from cell site transceivers, and that a separate investigation of dumping of such subassemblies is required before they can be subject to antidumping duties. Based upon the information presented to us during the course of this investigation we reaffirm our determination that related subassemblies are in the same "class or kind" of merchandise as cell site transceivers.

In accordance with section 733 of Act (19 U.S.C. 1673b) on June 12, 1984, the Department published its preliminary determination that there was reason to believe or suspect that cell site transceivers from Japan were being sold at less than fair value and that "critical circumstances" exist (49 FR 24155). On October 26, 1984, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" exist with respect to cell site transceivers from Japan (49 FR 43080).

On December 17, 1984 in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances".

Therefore, in accordance with section 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)) antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of cell site transceivers and related subassemblies from Japan. These antidumping duties will be assessed on all unliquidated entries entered, or withdrawn from warehouse, for consumption on or after June 12, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the Federal Register.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Kokusai	59.94
All other Manufacturers/Producers/Exporters	59.94

This determination constitutes an antidumping order with respect to cell site transceivers and related subassemblies from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48) of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations.

(19 CFR 353.48)

Dated: December 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-136 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-402; A-475-404]

Tubular Metal Framed Stacking Chairs From Taiwan and Italy; Postponement of Preliminary Antidumping Duty Determinations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determinations involving tubular metal framed stacking chairs from Taiwan and Italy are being postponed until not later than March 8, 1985.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Steven S. Lim or Ken Shimabukuro, Office of Investigations, Import Administration, U.S. Department of Commerce, 14 Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1776 or 377-5332.

SUPPLEMENTARY INFORMATION: On September 6, 1984, we announced the initiation of antidumping duty investigations to determine whether tubular metal framed stacking chairs from Taiwan and Italy are being, or are likely to be, sold in the United States at less than fair value (49 FR 35166-35167). The notices stated that we would issue our preliminary determinations by January 17, 1984. As detailed in the notices, the petitioner alleged that imports from Taiwan and Italy of tubular metal framed stacking chairs are being, or are likely to be, sold in the United States at less than fair value

On December 17, 1984, counsel for the petitioner requested that the Department extend the period for the preliminary determinations until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determinations in these cases is hereby extended. We intend to issue the preliminary determinations not later that March 8, 1985.

Scope of Investigation

The products covered by these investigations are "tubular metal framed stacking chairs", including stacking chairs with plastic slats or expanded metal mesh as well as of wire grid, as currently classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item 727.7065.

This notice is published pursuant to section 733(a)(2) of the Act.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

December 21, 1984.

[FR Doc. 85-135 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; U.S. Export and Trading Co.

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 amendment to 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 these applications must be submitted on or before January 23, 1985.

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 "Amendment #1, Export Trade Certificate of Review, application number 83-A0024."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, 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 (March 11, 1983) (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 the 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 15937-15940 (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 emendment to an Export Trade Certificate of Review which was issued on December 23, 1983 (#83-00024; 48 FR 57353, December 29, 1983).

Applicant: U.S. Export & Trading Company, P.O. Box 1698, Carlsbad, CA 92008.

Application No. 83–A0024.

Date Received: December 17, 1984.

Date Deemed Submitted: December 20, 1984.

Amendment: U.S. Export & Trading Company seeks to amend its Certificate of Review. The amendment would add Ultraviolet Resistant Polyvinylchloride (UVR-PVC) blended (formulated) componds to the products listed under Export Trade in the original certificate.

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 an 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.

Dated: December 28, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 85–120 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-DR-M

[A-588-403]

Stainless Steel Woven Wire Cloth From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that stainless steel woven wire cloth from Japan is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our detemination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of stainless steel woven wire cloth from Japan, with the exception of entries of merchandise from the four manufacturers that are excluded from this determination, that are entered, or withdrawn from warehouses, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice. Those firms which are subject to or excluded from this determination are indicated in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 12, 1985.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTRACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that stainless steel woven wire cloth (SSWWC) from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted average margins for the individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We have found either no margins, or *de minimis* margins on sales made by four of the firms investigated. Therefore, those firms have been excluded from this determination. The weighted average margins of all sales compared of the companies not excluded is 3.48 percent *ad valorem.*

Case History

On May 31, 1984, we received a petition filed in proper form from the American Wire Cloth Insititute (AWCI), on behalf of the U.S industry producing SSWWC. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on June 19, 1984 (49 FR 25890), and notified the ITC of our action.

On July 10, 1984, the ITC found that there is a reasonable indication that imports of SSWWC from Japan are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1552 July 1984).

On October 24, 1984, pursuant to a request from the petitioner under section 733(c)(1)(A) of the Act, the Department extended the date for the preliminary determination until December 27, 1984 (49 FR 42771).

The following manufacturers, accounting for more than 80 percent of the sales of the subject merchandise to the United States, were investigated Nihon Net Kosan Co. Ltd. (Nihon), Nissaku Wire Netting Co. Ltd. (Nissaku), Asano Wire Netting Co. Ltd. (Asano), F. Hayashi Wire Cloth Manufacturing Co. (Hayashi), Matsubara Wire Netting Co. Ltd. (Matsubara), Sakakura Wire and Wire Netting Co. Ltd. (Sakakura), Yamato Wire Netting Co. Ltd. (Yamato), DIA Enterprises Ltd. (DIA), and ITO Wire Netting Co. (ITO). We investigated 100 percent of the sales made by the above companies during the period of investigation (December 1, 1983, through May 31, 1984).

Scope of Investigation

The merchandise covered by this investigation is stainless steel woven wire cloth, whether in rolls, in endless bands, or in lengths, not cut to shape; woven of simple warp and weft construction with: (1) Meshes not finer than 30 wires to the lineal inch in wrap or filling, valued over 7.5 cents per square foot, (2) with meshes finer than 30 but not finer than 90 wires to the lineal inch in warp or filling, valued over 21.25 cents per square foot, or (3) with meshes finer than 90 wires to the lineal inch in warp or filling; as currently provided for in items 642.5200, 642.6400 and 642.7400 of the *TSUSA*. Stainless steel gauze, fabric, screen, netting or fencing are not covered by this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the FOB, CIF, or ex-godown packed price to unretated customers in the United States, or to unrelated trading companies in Japan. We made deductions, where appropriate, for Japanese inland freight, inland insurance, ocean freight, marine insurance, FOB charges, customs brokerage, and inspection expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales, sales to third country markets or constructed value. We made comparisons of "such or similar" merchandise based on grade, mesh size, and wire diameter categories selected by Commerce Department industry experts.

Where we used home market prices as the basis for foreign market value, we calculated the home market prices for each type of SSWWC on the basis of delivered or ex-factory packed prices to unrelated purchasers. From these prices, we deducted, where appropriate, Japanese inland freight and inland insurance. Where we used sales to third country markets as the basis for foreign market value, we calculated the third country price on the basis of the ex-godown or CIF price with deductions, where appropriate, for inland freight in Japan, inspection expenses, ocean freight and marine insurance. In both cases, we made adjustments, where appropriate, for differences in credit expenses and other direct selling expenses in accordance with §353.15 of our regulations (19 CFR 353.15). We also made adjustments, where appropriate, for differences in merchandise in accordance with § 353.16 of our regulations (19 CFR 353.16). We also deducted home market or third country packing costs and added the packing cost incurred on sales to the United States.

We disallowed a claimed adjustment for differences in manufacturing costs (based on differences in the order date between certain sales to the United States and certain sales to the home market). The adjustment was disallowed pursuant to § 353.16 of our regulations (19 CFR 353.16) which states that "Differences in costs of producing merchandise with identical physical characteristics as end products will not be considered appropriate adjustments." We also disallowed a claimed adjustment for higher administrative expenses incurred on home market sales because we consider these to be indirect expenses not bearing a direct relationship to the sales under consideration.

Where we used constructed value as the basis for foreign market value, we added the cost of materials, fabrication, general expenses, profit, and U.S. packing. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs, or the actual general expenses, whichever was higher. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses, or the actual profit, whichever was higher.

Verification

As provided in section 773(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of SSWWC from Japan, with the exception of the SSWWC produced by DIA, ITO, Matsubara and Yamato, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. Companies excluded from this determination are identified by an asterisk (*) in the chart below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percentage
Asano	5.60
Hayashi	2.07
Nihon	4.74
Nissaku	1.47
Sakakura	4.90
Matsubara *	[1] 11
Yamato*	[1] 32
DIA*	[1] 30
ITO*	.00
All other manufacturers/producers/exporters	3.48

[1] *De minimis*.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make a final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 1, 1985, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 25, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 C.F.R. 353.46, within 30 days of this notice's publication, at

the above address and in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

December 27, 1984.

[FR Doc. 85-137 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; Georgia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first eight (8) months is estimated at $300,667 for the project performance of 05/01/85 to 12/31/85. The MBDC will operate in the Atlanta, Georgia Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $255,567 in Federal funds and a minimum of $45,100 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-85004-01 for the Atlanta, Georgia SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Regional Office.

[FR Doc. 85-44 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcements; Mississippi

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $218,617 for the project performance of 05/01/85 to 06/30/86. The MBDC will operate in the Jackson, Mississippi Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $185,442 in Federal funds and a minimum of $32,725 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-85017-01 for the Jackson, Mississippi SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding

information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

Carlton L. Eccles,

Acting Regional Director, Regional Office.

Dated: December 19, 1984.

[FR 85-43 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Alabama

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $252,084 for the project performance of May 1, 1985 to March 31, 1986. The MBDC will operate in the Birmingham, Alabama Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $214,271 in Federal funds and a minimum of $37,813 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-85007-01 for the Birmingham, Alabama SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85-35 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Alabama

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first eleven (11) months is estimated at $171,417 for the project performance of 05/01/85 to 03/31/86. The MBDC will operate in the Mobile, Alabama, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $145,704 in Federal funds and a minimum of $25,713 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-85008-01 for the Mobile, Alabama SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–36 Filed 1–2–85; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcement; Alabama

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $171,417 for the project performance of 05/01/85 to 03/31/86. The MBDC will operate in the Birmingham, Alabama Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $145,704 in Federal funds and a minimum of $25,713 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85012–01 for the Montgomery, Alabama SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–28 Filed 1–2–85; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Applications; Connecticut

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first eight months is estimated at $105,967 for the project in performance of May 1, 1985 to December 31, 1985. The MBDC will operate the Connecticut Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and a minimum of $18,700 in non-Federal funds (which can be combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements, included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an

existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278; Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85–52 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Florida

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (8) eight months is estimated at $124,667 for the project performance of 05/01/85 to 12/31/85. The MBDC will operate in the Jacksonville, Florida Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and a minimum of $18,700 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85006–01 for the Jacksonville, Florida SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–34 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Florida

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $705,833 for the project performance of 05/01/85 to 03/31/86. The MBDC will operate in the Miami, Florida Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $599,958 in Federal funds and a minimum of $105,875 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85013–01 for the Miami, Florida SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed

approach to performing the work requirements included in the application; and the firm's estimated cost for providing assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–33 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Florida

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (8) eight months is estimated at $124,667 for the project performance of 05/01/85 to 12/31/85. The MBDC will operate in the Orlando, Florida Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and a minimum of $18,700 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85005–01 for the Orlando, Florida SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of miniority business individuals and organizations; the resources available to the firm in providing management organizations; the resources available to the firm in providing management work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–30 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Florida

AGENCY: Minority Business Development Agency, Commercial.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (11) eleven months is estimated at $171,417 for the project performance of 05/01/85 to 03/31/86. The MBDC will operate in the West Palm Beach, Florida Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $145,704 in Federal funds and a minimum of $25,713 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85014–01 for the West Palm Beach, Florida SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designated to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full

range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–32 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Georgia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (17) seventeen months is estimated at $264,917 for the project performance of May 1, 1985 to September 30, 1986. The MBDC will operate in the Augusta, Georgia Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $225,179 in Federal funds and a minimum of $39,738 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85019–01 for the Augusta, Georgia SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–39 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Georgia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (17) seventeen months is estimated at $264,917 for the project performance of 05/01/85 to 09/30/86. The MBDC will operate in the Columbus, Georgia Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $225,179 in Federal funds and a minimum of $39,738 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85020–01 for the Columbus, Georgia SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–29 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Georgia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (14) fourteen months is estimated at $218,617 for the project performance of 05/01/85 to 06/30/86. The MBDC will operate in the Savannah, Georgia Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $185,442 in Federal funds and a minimum of $32,725 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85010–01 for the Savannah, Georgia SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–37 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Kentucky

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (8) eight months is estimated at $124,667 for the project performance of 05/01/85 to 12/31/85. The MBDC will operate in the Louisville, Kentucky Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and

a minimum of $18,700 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-85003-01 for the Louisville, Kentucky SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85-38 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Boston, MA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first nine months is estimated at $175,312 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Boston, MA Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $175,312 in Federal funds and a minimum of $30,938 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85-51 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Newark et al., New Jersey

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve months is estimated at

$684,500 for the project performance of April 1, 1985 to March 31, 1986. The MBDC will operate in the Newark/Paterson/Jersey City, New Jersey Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $684,500 in Federal funds and a minimum of $115,500 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual; evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85–48 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Bronx, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first fifteen months is estimated at $366,520 for the project performance of April 1, 1985 to June 30, 1986. The MBDC will operate in the Bronx, N.Y. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $366,520 in Federal funds and a minimum of $64,680 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85–47 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Brooklyn, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first fifteen months is estimated at $418,880 for the project performance of April 1, 1985 to June 30, 1986. The MBDC will operate in the Brooklyn, NY

Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $418,880 in Federal funds and a minimum of $73,920 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85-49 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Brooklyn, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first twelve months is estimated at $340,000 for the project preformance of April 1, 1985 to March 31, 1986. The MBDC will operate in the Williamsburg, Bklyn, N.Y. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $340,000 in Federal funds and a minimum of $60,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3622.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of applications kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85-53 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; Nassau, Suffolk, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first nine months is estimated at $175,312 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the Nassau/Suffolk Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $175,312 in Federal funds and a minimum of $30,938 in non-

Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85–50 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Applications; New York City, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first nine months is estimated at $164,934 for the project performance of April 1, 1985 to December 31, 1985. The MBDC will operate in the New York City Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $164,934 in Federal funds and a minimum of $29,106 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC Program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications January 28, 1985. Applications must be postmarked on or before January 28, 1985.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1984.

William Bird,

Acting Regional Director, New York Regional Office.

[FR Doc. 85–54 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (8) eight months is estimated at $124,667 for the project performance of 05/01/85 to 12/31/85. The MBDC will operate in the Charlotte, NC Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $105,967 in Federal funds and a minimum of $18,700 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for

services). The Project Number is 04–10–85002–01 for the Charlotte, NC SMBA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential of success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the exerience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availablility of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–40 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (14) fourteen months is estimated at $218,187 for the project performance of 05/01/85 to 06/30/86. The MBDC will operate in the Greensboro, NC Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $185,442 in Federal funds and a minimum of $32,725 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85015–01 for the Greensboro, NC SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and education institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to detrmine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications in January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–41 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of preformance for the

first (14) fourteen months is estimated at $218,167 for the project performance of 05/01/85 to 06/30/86. The MBDC will operate in the Raleigh/Durham, North Carolina Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $185,442 in Federal funds and a minimum of $32,725 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85016–01 for the Raleigh/Durham, North Carolina SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC willl provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–42 Filed 01–02–85; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcement; South Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (14) fourteen months is estimated at $218,167 for the project performance of 05/01/85 to 06/30/86. The MBDC will operate in the Greenville, Spartansburg, SC Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $185,442 in Federal funds and a minimum of $32,725 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85018–01 for the Greenville/Spartansburg, SC SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia, Tuesday, January 15, 1985 at 9:00 a.m.

[FR Doc. 85–27 Filed 1–2–85; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcement; Tennessee

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first (17) seventeen months is estimated at $389,584 for the project performance of 05/01/85 to 09/30/86. The MBDC will operate in the Memphis, Tennessee Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $331,146 in Federal funds and a minimum of $58,438 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–85011–01 for the Memphis, Tennessee SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is January 31, 1985. Applications must be postmarked on or before January 31, 1985.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309, (404) 881–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Acting Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 19, 1984.

Carlton L. Eccles,

Acting Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, January 16, 1985 at 9:00 a.m.

[FR Doc. 85–31 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal of Exxon Company, U.S.A. From California Coastal Commission Objection

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of decision by the Secretary of Commerce.

SUMMARY: In accordance with NOAA regulations at 15 CFR 930.130, notice is hereby given of the decision by the Secretary of Commerce (Secretary) in the appeal by Exxon Company, U.S.A. (Exxon) under subparagraphs (A) and (B) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3) (A) and (B), from the objection of the California Coastal Commission (Commission) to Exxon's certification that its amended Plan of Exporation to drill at well location B in the southwest quarter of Lease OCS P-0467, Santa Barbara Channel, is consistent with the California Coastal Management Plan (CCMP).

On November 14, 1984, the Secretary denied Exxon's appeal because he found that there is a reasonable alternative available to Exxon which would permit the project to be carried out in a manner consistent with the CCMP. *See* 15 CFR 930.121. Further, the Secretary found that Exxon had not demonstrated that its proposed exploratory project directly supports national defense or other national security interests in such a manner that these interests would be significantly impaired if the drilling could not go forward as proposed. *See* 15 CFR 930.122. This decision is final agency action for purposes of judicial review.

Copies of the Secretary's findings and decision may be obtained from the Office of the Assistant General Counsel for Ocean Services, 2001 Wisconsin Ave. NW., Room 270, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: David Drake at the above address, or phone (202) 254–7512.

SUPPLEMENTARY INFORMATION: Notice of the appeal was published in the Federal Register on Tuesday, March 27, 1984 (49 FR 11699).

(Federal Domestic Assistance Catalog No. 11.419, Coastal Zone Management Program Administration)

Dated: December 21, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85–46 Filed 1–2–85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Receipt of Application for General Permit; Republic of Korea

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commerical fishing operations within the U.S. Fishery Conservation Zone, during 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: Mr. Sang Chul Song, Fisheries Attache, Embassy of the Republic of Korea, 2320 Massachusetts Avenue, N.W., Washington, D.C. 20008

has applied for a Category 1: Towed or Dragged Gear general permit to take up to 50 cetaceans, 100 otariid seals (northern sea lions) and 100 phocid seals (harbor seals) in the North Pacific Ocean and Bering Sea.

This application is available for review in the following office: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: December 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Modification of Permits; Northwest and Alaska Fisheries Center

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the Regulations Governing Endangered Species (50 CFR Part 222), Permit No. E3 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington 98112 on May 27, 1975 (40 FR 23777) as amended December 28, 1979; Permit No. 38 issued on August 14, 1974 (39 FR 30532) as modified on December 28, 1979 (45 FR 823); and Permit No. 42 issued on September 5, 1974 (39 FR 33386) as modified on December 28, 1979 (45 FR 823), are further modified as follows:

1. Permit No. E3

Section B-4 is modified by deleting "December 31, 1984" and substituting therefor the following: "December 31, 1989."

2. Permit No. 38

Section B-1 is modified by deleting "December 31, 1984" and substituting therefor the following: "December 31, 1989."

3. Permit No. 42

Section B-4 is modified by deleting "December 31, 1984" and substituting therefor the following: "December 31, 1989."

These modifications are effective on December 31, 1984.

The Permits as modified, and documentation pertaining to the modifications are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 24, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-107 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Changes to the Blanket Routine Uses for All DoD Systems of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Changes to the Blanket Routine Uses for all DoD systems of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete one Blanket Routine Use and add three new ones.

DATES: The proposed actions will be effective without further notice (thirty days after publication in the **Federal Register**) unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, c/o OSD Mail Room, Room: 3A-948, The Pentagon, Washington, D.C. 20301-1100. Telephone: 202/694-3027.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at the above address and telephone number.

SUPPLEMENTARY INFORMATION: Certain blanket "routine uses", as defined under the Privacy Act of 1974, as amended (5 U.S.C. 552a(a)(7)) have been established with the Department of Defense (DoD) and, unless specifically stated otherwise within a particular record system, these blanket routine uses are applicable to every record system maintained within the DoD. These blanket routine uses of the records are published only once at the beginning of each DoD Component's listing of record systems subject to the Privacy Act. They are used in the interest of simplicity, economy and to avoid redundancy by avoiding to have to repeat them all in each individual record system.

The DoD proposes to delete the existing blanket routine use—"Disclosure of information to NARS(GSA)" and create two new ones as the result of the legislative amendment of 44 U.S.C. 2904 and 2906. Effective April 1, 1985, the National Archives and Records Service (NARS) becomes independent of the General Services Administration (GSA) and will be known as the National Archives and Records Administration (NARA). However, GSA will retain some jurisdiction of inspections with certain aspects of agency records systems. Consequently a routine use must still remain exclusively for GSA. Therefore two new routine uses will result as the current blanket routine use—"Disclosure of information to NARS(GSA)" is deleted.

Another new blanket routine use is also added to permit records from DoD records systems, other than from the Office of Personnel Management Government-wide record system OPM/GOVT-1, to be disclosed to the Merit Systems Protection Board, includng its Office of the Special Counsel.

Dated: December 27, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

The following DoD Blanket Routine Use applicable to all DoD Components is deleted:

Routine Use—Disclosure of Information to NARS (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

The following new DoD Blanket Routine Uses, applicable to all DoD Components, are as follows:

Routine Use—Disclosure of Information to the General Services Administration (GSA)

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Routine Use—Disclosure of Information to the National Archives and Records Administration (NARA)

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Routine Use—Disclosure to the Merit Systems Protection Board

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

[FR Doc. 85-5 Filed 1-2-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Deletions and Amendments of Air Force Systems of Records

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notice of deletions and amendments to the Air Force systems of records.

SUMMARY: The Air Force is deleting 18 systems of records notices and proposes to amend 3. Amendments are summarized below followed by the rewritten notices reprinted in their entirety.

EFFECTIVE DATE: The deletions are effective immediately. The amendments shall be effective without further notice February 4, 1985, unless public comments are received which result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAQD(S), The Pentagon, Washington, D.C. 20330-5024. Telephone: 202/694-3431.

SUPPLEMENTARY INFORMATION: The Air Force systems of records inventory subject to the Privacy Act of 1974, 5 U.S.C. 552a (Pub. L. 93-579; 44 Stat. 1896 *et seq.*) have been published in the **Federal Register** as follows:

FR Doc. 82-30348 (47 FR 50004) November 4, 1982
FR Doc. 83-1956 (48 FR 4106) January 28, 1983
FR Doc. 84-15 (49 FR 702) January 5, 1984
FR Doc. 84-1117 (49 FR 2005) January 17, 1984
FR Doc. 84-13778 (49 FR 21786) May 23, 1984
FR Doc. 84-14822 (49 FR 23104) June 4, 1984
FR Doc. 84-17737 (49 FR 27601) July 5, 1984
FR Doc. 84-23501 (49 FR 35170) September 6, 1984
FR Doc. 84-23500 (49 FR 35171) September 6, 1984
FR Doc. 84-33590 (49 FR ———) December 27, 1984

None of the amendments required an altered system report under the provisions of 5 U.S.C. 552a(o).

Dated: December 27, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

F030 ATC B

System name: Enlistee Quality Control Monitoring System.
Reason: These records are now part of system F035 ATC G, Recruiting Activities Management Support System.

F030 SAC A

System name: Rehabilitation Review Program.
Reason: This system has been discontinued.

F035 ATC J

System name: Administrative Discharge Information Summary.
Reason: These records properly come under system F035 MPC U, Separation Case Files (Officer and Airman).

F040 AF MP A

System name: Civilian Personnel Occupational and Suitability Employment Examinations.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP B

System name: Civilian Personnel Test Score Record.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP C

System name: Job Element Questionnaires for Civilian Trade and Labor Occupations.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP D

System name: Civilian Personnel Applicant Supply File.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP E

System name: Training and Employee Development Records.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP F

System name: Civilian Personnel Performance Awards and Outstanding Performance Ratings.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP G

System name: Labor Management Relations Records.
Reason: These records are covered by OPM/GOVT systems notices.

F040 AF MP I

System name: Supervisor's Records of Civilian Employee.
Reason: These records are covered by OPM/GOVT systems notices.

F050 ATC I

System name: Technical Training Management Information System.
Reason: These records properly come under system F035 AF MP C, Military Personnel Records System.

F050 TAC A

System name: Student Record Files.
Reason: These records are not retrievable by any personnel identifier.

F051 SAC A

System name: SAC Aircrew Management System (SACARMS).
Reason: This system has been discontinued.

F111 SAC A

System name: Military Justice Administration.
Reason: This system has been discontinued.

F0162 AF SG B

System name: Dental Professional Activities.
Reason: These records are not a separate system of records.

F0162 AF SG A

System name: Dental Personnel Actions.
Reason: These records are not a separate system of records.

F163 AF SG A

System name: Veterinary Records.
Reason: This system has been discontinued since veterinary medicine has been transferred to the Army.

Amendments

The following major changes have been made to the systems notices published as amended below. These notices have also been substantially rewritten in the interest of clarity and accuracy.

F050 SAC A

System name: Space Operations Personnel Training Management.

Changes: This system is renumbered F050 SPACECM A, Space Command Operations Program Management, and the authorities renumbered and locations changed due to the transfer of functions from Strategic Air Command to Space Command. The rest of the notice is unchanged.

F090 SAC A

System name: Unaccompanied Personnel Quarters Assignment/ Termination.

Changes:

System Identification: Change to "F090 AF B."

System location: Delete "Strategic Air Command."

System Manager(s) and Address: Delete "Strategic Air Command" and change "SAC" to "AF."

Notification Procedure: Delete "Strategic Air Command" and change "SAC" to "AF."

F111 AF JA B

System name: Court-Marital and Article 15 Records.

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In the last sentence, after "government;" add "The records may also be released to a governmental board or agency or health care professional society or organization if such record or document is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed non-credentialed health care personnel who are or were members of the United States Air Force, and to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such records or document is needed to assess the professional qualifications of such member."

F050 SPACECM A

SYSTEM NAME:

Space Operations Program Management.

SYSTEM LOCATION:

Director of Operations at Air Force installations within Space Command: Deputy Commander for Operations at 1st Space Wing and Deputy Chief of Staff for Operations at Space Command Headquarters. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Space Command military personnel currently assigned to operational duties with Space, Warning and Surveillance Systems equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to qualifications, training/evaluation accomplishment, staff/crew alphanumeric identifier, type training/evaluation, scores, name, grade, unit assigned, and dates of training or evaluation conducted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: powers and duties; delegation by and Space Command Regulations 50–11, Space Command Operations training, Volume I, and 55–142, Space, Warning and Surveillance System Unit Standardization and Evaluation.

PURPOSE(S):

To develop a record source of operations personnel qualifications, capabilities and histrical data at unit level to determine individual overall job qualifications; and to develop historical data for analysis by unit and Strategic Air Command Headquarters personnel responsible for maintaining the space operational systems training program. The files will provide a source of data to help insure weapon system currency and adequacy of future training requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of unit files and by personnel responsible for servicing the record system in performance of official duties, and by HQ Space Command Inspection/ Evaluation Teams. File folders are stored in locked rooms or drawers.

RETENTION AND DISPOSAL:

Manual files are forwarded to gaining unit upon permanent change of station orders to another Space Command unit. If individual transfers to another USAF Major Command (MAJCOM), the file is returned to the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations, Chief Standardization Evaluation and Training Division, Headquarters Space Command, Deputy Commander for Operations, Chief Standardization Evaluations Division of Chief Operations Training Division at 1st Space Wing; or Director of Operations at Space Command bases with a Space, Warning or Surveillance mission.

NOTIFICATION PROCEDURE:

Deputy Chief of Staff for Operations, Headquarters Space Command; Deputy Commander for Operations, 1st Space Wing or Director of Operations at Space Command bases. Requests to determine existance of record should include full name, grade and approximate dates individual was assigned to Space Command space, warning and surveillance duties after 1 Sep 1983.

RECORD ACCESS PROCEDURES:

Access to files is controlled by Deputy Chief of Staff for Operations at Headquarters Space Command, Deputy Commander for Operations at 1st Space with and by the Director of Operations at each Space Command organization with a space, warning or surveillance mission.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual and from instructors or Standardization Evaluators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F090 AF B

SYSTEM NAME:

Unaccompanied Personnel Quarters Assignment/Termination.

SYSTEM LOCATION:

All Air Force bases. Located in the Base Billeting Operations Office and in the respective Squadron Orderly Room. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Unaccompanied military personnel who: (1) Apply for or who are entitled to occupy unaccompanied quarters, (2) accept or decline unaccompanied on-base quarters, (3) reside off-base at their own expense, (4) accept inadequate quarters, and/or (5) are identified as authorized to reside off-base with prescribed quarters allowance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to application, assignment, acceptance, declination, or termination of unaccompanied quarters; authorization for unaccompanied personnel to reside off-base at their own expense; voluntary acceptance of inadequate quarters; and/or authorization to reside off-base with prescribed quarters allowance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: power and duties, delegation by.

PURPOSE(S):

To effectively manage unaccompanied personnel quarters; establish and maintain a record of application for unaccompanied personnel quarters assignment; terminate assignment to unaccompanied quarters; and grant authorization to reside off-base with or without specified quarters allowance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of unit files and by personnel responsible for servicing the record system in performance of official duties. File folders are stored in locked rooms and drawers.

RETENTION AND DISPOSAL:

Records are destroyed by tearing into pieces, shredding, burning, macerating, or pulping when superseded or when individual is reassigned.

SYSTEM MANAGER(S) AND ADDRESS:

Base Billeting Manager and Commanders of squadrons of AF bases.

NOTIFICATION PROCEDURE:

Individuals may contact the Base Billeting Manager or Squadron Commanders on AF bases. Requests to determine existence of record should include full name and grade and approximate dates individual was assigned to or serviced by the base billeting operation subsequent to 1 July 1981.

RECORD ACCESS PROCEDURES:

Access is controlled by Base Billeting Manager at base level or by Squadron Commanders.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35.

RECORD SOURCE CATEGORIES:

Information is obtained from individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F111 AF JA B

SYSTEM NAME:

Court-Martial and Article 15 Records.

SYSTEM LOCATION:

At Headquarters United States Air Force, Washington DC 20330. At Air Force Military Personnel Center, Randolph Air Force Base, TX 78148. At National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. At Washington National Records Center, Washington DC 20409. At headquarters of the United States Air Force, major commands and major subordinate commands. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice. At headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons subject to the Uniform Code of Military Justice (UCMJ) (10 USC 802) who are tried by court-martial or upon whom Article 15 punishment is imposed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of trial by court-martial and records of Article 15 punishment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 815(g), Commanding officer's non-judicial punishment; 854, Record of Trial; 865, Dispoaition of records after review by the convening authority.

PURPOSE(S):

Records of trial by court-martial are used for review by the appellate and other authorities. Portions of the record in every case are used in evaluating the individual's overall performance and inclusion in their military master personnel record; if conviction results, a record thereof can be introduced at a subsequent court-martial trial involving the same individual; also used as source documents for collection of statistical information. Article 15 records are used for review of legal sufficiency and action on appeals or applications for correction of military records filed before appropriate Air Force authorities; used to formulate responses to inquiries concerning individual cases made by the Congress, the President, the Department of Defense, the individual involved or other persons or agencies with a legitimate interest in the Article 15 action; used by Air Force personnel authorities in evaluating the individual's overall performance and inclusion in the individual's military master personnel record; may be used for introduction at a subsequent court-martial trial involving the same individual; used as source documents for collection of statistical information by The Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records of trial by courts-martial are used for review at all levels within DOD, military appellate courts, corrections and probation authorities, and the President. Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Individual records may be transferred to other components within the Department of Defense, the Department of Justice, the Veteran's Administration, or state and federal courts for determination of rights

and entitlements of individuals concerned or the government; used to formulate responses to inquiries concerning individual cases made by the Congress, the President, the Department of Defense, the individual involved or other persons or agencies with a legitimate interest in the court-martial proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name, Social Security Number (SSN), Military Service Number, or by other identification number or system identifier.

SAFEGUARDS:

Records are accessed by custodian of the record system and person(s) who are properly screened and cleared for need-to-know. Records are stored in vaults and locked cabinets or rooms. Records are protected by guards, and controlled by personnel screening and by visitor registers.

RETENTION AND DISPOSAL:

Court-Martial records are retained in office files for two years following date of final action and then retired as permanent. All general and special court-martial records are retired to the Washington National Records Center, Washington DC 20409. Article 15 records are retained in office files for one year or until no longer needed, whichever is sooner, and then retired as permanent. Summary courts-martial and Article 15 records are forwarded to the Air Force Military Personnel Center, Randolph AFB, TX 78148 and filed in the individual's master personnel record.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force. Staff Judge Advocate at all levels of command and the Military Personnel Records Division, Directorate of Personnel Data Systems, Air Force Military Personnel Center (AFMPC/DPMDR).

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice. Information required will be full name, SSN, service number if different than SSN, unit of assignment, date of trial and type of court, if known, or date punishment imposed in the case of Article 15 action. Requester may visit the Office of The Judge Advocate General, Forrestal Bldg., Washington, DC and must present valid identification card or driver's license.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information from almost any source can be included if it is relevant and material to the Article 15 or court-martial proceedings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-4 Filed 1-2-85; 8:45 am]

BILLING CODE 3810-01-M

Engineer Corps, Department of the Army

Intent; To Prepare a Draft Environmental Impact Statement (DEIS) Considering Potential Solutions to Flooding Problems at Marlinton, WV

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

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. The alternative plans for reducing flood damages at Marlinton, in Pocahontas County, West Virginia, will be presented in a draft feasibility report (Survey Report) and DEIS. Damages principally result from flooding of two streams, the Greenbrier River and Knapps Creek, and to a far lesser extent Stoney Creek.

2. The plans presently being considered as part of the Marlinton Study are:

a. *No Action.* Do nothing to alleviate the flood problem at Marlinton.

b. *Non-structural.* Raise-in-place, floodproof, or remove structures using the most effective method.

c. *Channel Modification.* Widen channel of the Greenbrier River to efficiently reduce flood heights. Removal of stream bed material will be kept to a minimum, as excavation will start several feet above stream bed. Exact length of the channel modification has not been finalized, but should be within the range of 6500 feet to 10,000 feet.

d. *Channel Modification and Non-structural.* Combination of the two alternatives (b. & c.) outlined above.

3. Public meetings and meetings to exchange information will be, and have been held with local, State and Federal agencies. Close cooperation and consultation with U.S. Fish and Wildlife Service and West Virginia Department of Natural Resources will be maintained in recognition of the Greenbrier River as a high quality natural resource. Although not directly affecting national forest lands, portions of the project would be within the authorized boundary for national forest land. In addition, coordination is maintained with the U.S. Forest Service because the Greenbrier River is a potential wild, scenic or recreational river area.

4. Issues to be addressed in the DEIS include:

(a) Environmental impacts of channel modification upon aquatic and terrestrial quality.

(b) Socio-economic impact upon community cohesion, growth, housing and aesthetics of the various plans.

(c) Consideration of potential conflicts with the purposes of the Wild and Scenic Rivers Act.

5. In addition to information obtained from other agencies, the U.S. Fish and Wildlife Service is preparing a Draft Coordination Report to provide evaluations and recommendations to preserve, mitigate, and enhance natural resources.

6. The study process and resulting DEIS will conform to the provisions of the National Environmental Policy Act of 1969 and all other Federal regulations and executive orders pertaining to environmental protection. The DEIS is scheduled for distribution to the public in June 1985.

ADDRESS: Questions about potential actions and DEIS can be directed to: Mr. Robert Burns, Study Manager, Huntington District, Corps of Engineers, Huntington, West Virginia 25701, 304-529-5639.

Dated: December 24, 1984.

Carl B. Tweedt,

Deputy District Engineer.

[FR Doc. 85-66 Filed 1-2-85; 8:45 am]

BILLING CODE 3710-GM-M

Department of the Navy

Privacy Act of 1974; Deleted System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amendment of systems of records.

SUMMARY: The Department of the Navy proposes to amend one system of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice February 4, 1985 unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems manager identified in the systems notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the **Federal Register** as follows:

FR Doc. 83-109 (48 FR 26029) June 6, 1983
FR Doc. 84-2616 (49 FR 3901) January 31, 1984
FR Doc. 84-2828 (49 FR 4124) February 2, 1984
FR Doc. 84-4908 (49 FR 6967) February 24, 1984
FR Doc. 84-8893 (49 FR 13350) April 4, 1984
FR Doc. 84-8901 (49 FR 13399) April 4, 1984
FR Doc. 84-10509 (49 FR 15601) April 19, 1984
FR Doc. 84-10681 (49 FR 16777) April 20, 1984
FR Doc. 84-14818 (49 FR 23107) June 4, 1984
FR Doc. 84-16521 (49 FR 2507) June 21, 1984
FR Doc. 84-23495 (49 FR 35172) September 6, 1984
FR Doc. 84-25459 (49 FR 37825) September 26, 1984
FR Doc. 84-27397 (49 FR 40948) October 18, 1984
FR Doc. 84-28271 (49 FR 43089) October 26, 1984
FR Doc. 84-31705 (49 FR 47547) December 5, 1984

The proposed amendment is not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of altered systems reports.

Dated: December 27, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

N05800-1

SYSTEM NAME:

Legal Office Litigation/ Correspondence File (48 FR 26104), June 6, 1983.

CHANGES:

SYSTEM LOCATION:

Delete the entire entry and substitute with the following: "Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities. Official mailing addresses are listed in the Navy's address directory appended to this publication."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line 3, delete the phrase: "Puget Sound Naval Shipyard." and substitute with: ". . . the Navy."

PURPOSE(S):

Add the following new paragraph: "To prepare correspondence and materials for litigation."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with the following: "Associate General Counsel (Litigation), Washington, DC 20360."

N05800-1

SYSTEM NAME:

Legal Office Litigation/ Correspondence File.

SYSTEM LOCATION:

Organizational elements of the Department of Navy as indicated in the directory of Department of the Navy activities. Official mailing addresses are listed in the Navy's address directory appended to this publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Criminal and civil plaintiffs/ defendants involved in litigation against or involving the Navy.

* * * * *

PURPOSE(S):

To prepare correspondence and materials for litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel (Litigation), Washington, DC 20360.

[FR Doc. 85-6 Filed 1-2-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER84-707-001 and ER84-579-000]

AEP Generating Co. et al.; Order Granting Motion for Reconsideration, Accepting for Filing and Suspending Rates, Granting Waiver of Advance Filing Limitation, and Consolidating Dockets

Issued: December 27, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On November 30, 1984, the AEP Generating Company, Appalachian Power Company, and Indiana & Michigan Electric Company (together referred to as the AEP Parties) jointly filed a motion for reconsideration of the Commission's order issued in Docket No. ER84-707-000 on November 21, 1984, 29 FERC ¶ 61,238. The Virginia Electric and Power Company (VEPCO) joined in the AEP Parties' motion by a filing submitted on December 4, 1984. The Commission's November 21 order, *inter alia*, accepted for filing, without suspension or hearing, three of the four services incorporated in the AEP Parties' October 1, 1984 agreement with VEPCO, and allowed those parts of the agreement to become effective on October 1, 1984. However, the Commission's order also rejected that portion of the proposed agreement relating to the sale of Rockport unit power and energy. In declining to grant the necessary waiver of the 120-day advance filing limitation and to accept for filing the Rockport unit sale portion of the agreement (scheduled to take effect under the agreement on January 1, 1987), we noted that the filing had been characterized as an initial rate schedule, that the Commission's authority to suspend the Rockport rate may thus be

in question, [1] and that we were not prepared to accept the Rockport rate without suspension.

On reconsideration, the AEP Parties and VEPCO assert that the four services encompassed by their October 1 agreement are interrelated and comprise a single unseverable package. To facilitate acceptance of the entire agreement, the parties agree that, for purposes of this proceeding, the rate for Rockport unit power is not an initial rate and that they will accept a refund condition as to that rate. The AEP Parties and VEPCO therefore request that the Commission issue a new order which accepts for filing the agreement in its entirety.

Discussion

In our earlier order, we indicated that we were not prepared to accept the Rockport rate for filing unless the filing parties agreed to make the rate subject to refund with interest. The AEP Parties and VEPCO have now agreed to this condition and have thus satisfied our concern. Accordingly, we shall grant the motion for reconsideration of our November 21, 1984 order, and grant waiver of the 120-day advance filing limitation, as requested by the parties.

With request to the portion of the proposed agreement relating to the sale of Rockport unit power and energy, we find that AEP's submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept for filing AEP's submittal as to the Rockport unit and suspend its operation as ordered below.[2]

In *West Texas Utilities Company*, 18 FERC ¶61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our preliminary review indicates that the proposed cost of service formula for the Rockport unit sales may not yield substantially excessive revenues. Accordingly, we shall suspend that portion of AEP's submittal for a nominal period, to become effective, subject to refund, on January 1, 1987 (the date this service is to commence under the agreement).

The Rockport cost of service formula is presently being litigated in Docket No. ER84-579-000. We note that VEPCO is an intervenor in that case. Further, the AEP Parties state that the proposed agreement provides that the Rockport unit sales rates to VEPCO will be subject to the outcome of Docket No. ER84-579-000. Thus, we find that common questions of law and fact may be presented in Docket Nos. ER84-579-000 and ER84-707-001. As a result, we shall consolidate those dockets for purposes of hearing and decision. Because, by this order, we will have accepted the entire agreement for filing, to become effective on the dates requested by the parties, we do not believe that consolidation will impinge upon any of the services provided for under the agreement. Thus, we find that the AEP Parties' and VEPCO's original concerns regarding consolidation are unwarranted.

The Commission orders

(A) The AEP Parties' and VEPCO's motion for reconsideration is hereby granted.

(B) Waiver of the 120-day advance filing limitation is hereby granted as to the portion of the proposed agreement relating to Rockport unit power and energy.

(C) That portion of the proposed agreement concerning the Rockport unit sales is hereby accepted for filing and suspended, to become effective, subject to refund, on January 1, 1987.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the AEP Parties' cost of service formula rate for Rockport unit sales.

(E) Docket Nos. ER84-707-001 and ER84-579-000 are hereby consolidated for purposes of hearing and decision.

(F) The administrative law judge designated to preside in Docket No. ER84-579-000 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-144 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] *See Middle South Energy, Inc. v. FERC*, ——— F.2d ———, Nos. 83-1634 and 83-1772 (D.C. Cir. 1984).

[2] Since the proposed agreement as a whole was given rate schedule designations in our earlier order, we will not issue new designations to cover the Rockport unit sales portion of the agreement here.

[Docket Nos. RP84-76-004 and TA85-1-1-002]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 27, 1984.

Take notice that on December 14, 1984, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing revised tariff sheets designated as follows:

Second Substitute First Revised Sheet Nos. 4, 7, 9, 13, 17 and 21.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 19, 1984.

Such tariff sheets are proposed to become effective as of October 31, 1984. Alabama-Tennessee requests a waiver of any Commission Regulations required to make the above-designated tariff sheets effective as of October 31, 1984, which is the date after the expiration of the suspension of the original tariff sheets by the Commission's Order of May 30, 1984.

Alabama-Tennessee states that such substitute revised tariff sheets are submitted pursuant to the requirements of the Commission's Order of September 12, 1984, and the Letter Orders issued October 31, 1984 and December 6, 1984, by the Director, Office of Pipeline and Producer Regulation, requiring the elimination of specified variable costs from the minimum bill provisions of the tariff.

In addition, Alabama-Tennessee submitted a revised tariff sheet, Substitute Second Revised Sheet No. 4, proposed to become effective January 1, 1985. Alabama-Tennessee states that the purpose of this tariff sheet is to conform the base rates of its PGA filing of November 30, 1984, to the base rates as filed on December 14, 1984, in Docket No. RP84-76-000.

Alabama-Tennessee states that copies of this filing have been served upon its jurisdictional customers and the State

Commissions of Alabama, Mississippi and Tennessee.

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 January 4, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-166 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

Algonquin Gas Transmission Co.; Tariff Filing Under Purchased Feedstock Adjustment Clause

[Docket Nos. TA85-3-20-000 and TA85-3-20-001]

December 24, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on December 14, 1984, tendered for filing Seventh Revised Sheet No. 202 pursuant to its Rate Schedule SNG-1 Purchased Feedstock Adjustment Clause, as contained in its FERC Gas Tariff, Second Revised Volume No. 1, decreasing the applicable rate by 11.05¢ per MMBtu to reflect a lower cost of feedstock for the 1984-85 season. The adjustment is filed to be effective as of November 1, 1984.

Algonquin Gas notes that a copy of this filing is being served upon all affected parties and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 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 *January 4, 1985.* 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-168 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-586-001]

Electric Energy, Inc.; Compliance Filing

December 28, 1984.

Take notice that on December 20, 1984, Electric Energy, Inc. (EEI), submitted for filing a compliance report pursuant to the Commission's order dated November 20, 1984.

EEI has submitted a revised Letter Agreement dated December 11, 1984 between EEI and the United States Department of Energy (DOE) modifying FERC Rate Schedule No. 7.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 14, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-147 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-185-000]

Central Louisiana Electric Company, Inc.; Filing

December 26, 1984.

The filing Company submits the following:

Take notice that on December 14, 1984, Central Louisiana Electric Company, Inc. (CLECO) Tendered for filing an executed Letter Agreement between CLECO and the Louisiana Energy and Power Authority (LEPA) providing the terms under which CLECO will furnish 6 MW of transmission service from CLECO's point of interconnection with Louisiana Power & Light Company (LP&L) to the City of Alexandria, Louisiana.

CLECO requests an effective date of December 1, 1984, and therefore requests waiver of the Commission's notice requirements.

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 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 January 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-168 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-25-000]

Gulf States Utilities Co.; Application

December 28, 1984.

Take notice that on December 21, 1984, Gulf States Utilities Company (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue up to $150,000,000 principal amount of unsecured debentures or notes and for exemption from competitive bidding and certain negotiating requirements.

Any person desiring to be heard or to make any protest with reference to said Application should on or before January 11, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 385.211 or 385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-149 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-178-000]

Kansas Power and Light Co.; Filing

December 28, 1984.

The filing Company submits the following:

Take notice that on December 11, 1984, the Kansas Power and Light Company (KPL) tendered for filing a newly exeacuted renewal contract dated December 3, 1984, with the City of Severance, Kansas for wholesale service to that community. KPL states that this contract permits the City of Severance to receive service under rate schedule WSM-112/83 designated Supplement No. 10 to R.S. FERC No. 171. The proposed effective date is February 15, 1985. The proposed contract changes provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Severance and the State Corporation Commission of Kansas.

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 January 10, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-150 Filed 1-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-183-000]

Kansas Power and Light Co.; Filing

December 26, 1984.

The filing Company submits the following:

Take notice that on December 14, 1984, the Kansas Power and Light Company (KP&L) tendered for filing a newly executed renewal contract dated December 7, 1984, with the City of Netawaka, Kansas, for wholesale service to that community. KP&L states that this contract permits the City of Netawaka to receive service under rate schedule WSM-12/83 designated Supplement No. 10 to R.S. FERC No. 166. The proposed effective date is January 15, 1985 and KP&L requests that the Commission waive the notice requirements as allowed in § 35.11 of its Regulations. The proposed contract changes provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KP&L states that copies of the contract have been mailed to the City of Netawaka and the State Corporation Commission of Kansas.

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 January 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-169 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-49-000]

Northwest Pipeline Corp.; Filing of Annual Compliance Report

December 24, 1984.

Take notice that on December 14, 1984, Northwest Pipeline Corporation ("Northwest") tendered for filing its Annual Compliance Report and Cost-of-Service Study pursuant to Sections 13 and 14 of its Rate Schedule T-1 as contained in its FERC Gas First Revised Volume No. 1 Tariff.

Northwest proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1985, in accordance with Section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study and to implement an Amortizing Adjustment effective February 1, 1985, in accordance with Section 14 of Rate Schedule T-1.

Copies of this filing have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 4, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-170 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-182-000]

Pacific Gas and Electric Co.; Filing

December 26, 1984.

The filing Company submits the following:

Take notice that on December 14, 1984, Pacific Gas and Electric Company (PG&E) tendered for filing a proposed change under electric service Rate Schedule FERC Nos. R-1, R-2, 53, 72, 84, 85 and 88. This change is a one-time adjustment resulting in a net refund to affected customers. The adjustment is the sum of a credit for part of the gain from the sale of certain coal properties, and an increased revenue requirement during part of 1983 for a new hydroelectric powerhouse in commercial operations but not included in rate base at that time. The total of this adjustment as of December 31, 1984 is a net credit of $2,873,924.

All affected customers have approved the proposed change. This change is proposed to become effective when it is accepted for filing or approved by the Commission, at which time refunds will be made. To the extent such Commission action occurs sooner than sixty days, PG&E has requested a waiver of the notice require requirement.

Copies of this filing were served upon the affected customers and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 motions or protests should be filed on or before January 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-171 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-181-000]

Pacific Power & Light Co. Assumed Business Name of PacificCorp; Filing

December 26, 1984.

The filing Company submits the following:

Take notice that on December 13, 1984, Pacific Power & Light Company, an assumed business name of PacificCorp, tendered for filing Notices of Cancellation of bilateral Rate Schedule FPC/FERC Nos. 45.5, 66.2, 88, 101, 106, 107, 110, 114.23, 115, 124, 127, 173, 215, 216, and 230. Pacific states that these Rate Schedules have expired by their own terms.

Pacific requests an effective date of sixty days after date of filing.

Notice of the proposed respective cancellations have been served upon the respective parties and public utility commission(s).

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 January 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-172 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-187-000]

Portland General Electric Co.; Filing

December 28, 1984.

The filing Company submits the following:

Take notice that on December 18, 1984, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective on July 31, 1984. The filing includes a revised Schedule 5 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization for this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the PCA adjustment to the current base, of 45.60 mills/kWh as approved by BPA, is (1.42) mills/kWh, which results in a net ASC rate of 44.18/mills/kWh.

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 January 10, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-153 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-186-000]

Tampa Electric Co.; Filing

December 26, 1984.

The filing Company submits the following:

Take notice that on December 14, 1984, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and Fort Pierce Utilities Authority (Fort Pierce). Tampa states that Service Schedule X is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa and Fort Pierce, designated as Tampa's Rate Schedule FERC No. 12.

Tampa proposes an effective date of December 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Fort Pierce and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 January 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-173 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-81-000]

West Texas Utilities Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Directing Summary Disposition, Granting Waiver of Filing Requirements, and Establishing Hearing and Price Squeeze Procedures

Issued: December 28, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On October 31, 1984, West Texas Utilities Company (WTU) submitted for filing a proposed two-step increase in its rates for service to 15 TR-1 tariff customers, two partial requirements customers (the Cities of Brady and Coleman, Texas), and Texas-New Mexico Power Company (TNP).[1] The proposed Level A rates would increase revenues by approximately $3.4 million (4.9%), and the proposed Level B rates would increase revenues by an additional $1.0 million (1.6%), based on a calendar year 1985 test period. WTU states that the only difference between the two sets of rates is that the Level B rates are designed to produce a higher return on common equity than the Level A rates. WTU's proposed rates reflect an increase in the amount of construction work in progress (CWIP) included in rate base pursuant to § 35.26 of the Commission's regulations. WTU requests effective dates of December 31, 1984 and January 1, 1985, for the Level A and B rates, respectively. However, in accordance with the terms of a settlement reached in Docket No. ER83-694-000, WTU requests that the Level A rates be suspended until January 1, 1985.

[1] *See* Attachment A for affected customers and rate schedule designations.

WTU further requests that, if the Commission allows the Level B rates to become effective on January 1, 1985, with no additional suspension, the Level A rates be deemed withdrawn. Should the Commission determine that WTU's submittal would be premature in violation of the 10-month restriction on the supersession of CWIP-based rates for service to Brady, Coleman, and TNP, WTU alternatively requests that both the Level A and B rates be made effective on January 1, 1985 for the tariff customers, on January 22, 1985 for TNP, and on January 24, 1985 for Brady and Coleman. Finally, WTU requests waiver of the Commission's filing requirements.

Notice of WTU's filing was published in the **Federal Register**, with comments due on or before November 27, 1984. 49 FR 45920. TNP and the Cooperative and Municipal Wholesale Customers of WTU (Cooperatives) [2] filed timely motions to intervene. TNP also seeks rejection of the filing,[3] claiming that the proposed increase to TNP cannot be properly filed before January 22, 1985. In support of its motion to reject, TNP claims that WTU's filing is impermissibly premature, because it would violate the Commission's 10-month restriction regarding the timing of increases in the level of CWIP. TNP also asserts that its settlement with WTU in Docket No. ER83-694-000 contains no provision with respect to proposed effective dates for future rates to TNP.

The Cooperatives request rejection of the CWIP-related increase to the City of Brady, asserting that, pursuant to the Commission's regulations, WTU cannot file for a CWIP-based rate increase to the City of Brady before January 24, 1985, 10 months after the effective date of WTU's current CWIP-related rates for Brady. The Cooperatives aver that WTU has neither specifically sought nor shown good cause for waiver of either § 35.26 or the 60-day notice requirement. However, the cooperative customers state that they will abide by the January 1, 1985 effective date for their proposed rate increase, in accordance with their agreement with WTU in Docket No. ER83-694-000. The Cooperatives seek summary disposition with respect to a number of other issues, including: the alleged mismatch between the proposed Level B revenues and WTU's cost of service; the alleged overstatement of miscellaneous steam power expense and fuel stock levels; calculation of AFUDC; inclusion of an employee discount expense in cost of service; and the identification of qualifying pollution control CWIP facilities. In support of their request for suspension, the Cooperatives raise several additional issues, including: Rate of return; working capital; depreciation rates; unfunded deferred tax liability; revenues recovered through the fuel adjustment clause; allocation of overhead lines; advertising expense; the proposed 69 KV demand loss factor; and rate design. Finally, the Cooperatives allege price squeeze.

On December 12, 1984, WTU separately filed answers to the interventions of TNP and the Cooperatives. While not opposing either intervention, WTU opposes the motions to reject and for summary disposition and denies all allegations made in support of the Cooperatives' request for suspension. The company further asserts that Brady's opposition to the proposed January 1, 1985 effective date is contrary to its settlement agreement with WTU in Docket No. ER83-694-000.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, the timely motions to intervene of the Cooperatives and TNP serve to make them parties to this proceeding. 18 CFR 385.214(c)(1).

Motions to Reject

The motions to reject the CWIP-related rate increases to the City of Brady and TNP are based on the claims that WTU has not complied with the applicable restriction of § 35.26 of the Commission's regulations. While the City of Coleman has not intervened, its rate increase would also be subject to rejection on the same grounds. Section 35.26(d) specifically prohibits the filing of rate schedules including additional CWIP during the initial 10-month period of effectiveness of the rates to be superseded, if such rates also reflect CWIP. This 10-month filing limitation, in conjunction with the 60-day notice requirement, provides for a minimum 12-month period, beginning with the effectiveness of the underlying CWIP-based rates, when no additional CWIP-based rate increase will be permitted to become effective.

Our comparison of the effective dates of the previous CWIP-based rates with the date the proposed CWIP-based rate increases were filed indicates that the instant filing is premature with respect to TNP and the Cities of Brady and Coleman.[4] WTU relies on the language in § 35.26(d) which permits the 10-month rule to be satisfied by maintaining a constant level of CWIP ". . . in one or more rate schedules." The company apparently believes that this language supports its proposition that the 10-month limit can be satisfied for all rates and customer classes as long as at least one rate or customer group is in conformance. The company's interpretation is incorrect. The language "in one or more rate schedules" was added by the Commission on rehearing of Order No. 298 specifically to allow a utility to satisfy the 10-month minimum, even though it charged a particular customer or customer class under several intervening rate schedules containing CWIP, providing the level of CWIP remained constant. In other words, the 10-month clock would not be restarted by filings which provided for increases in general costs other than CWIP.

WTU's apparent misinterpretation of § 35.26(d) is further illustrated by the company's request for an alternative set of effective dates. WTU's alternative effective dates provide for a 10-month period between existing and proposed effective dates, indicating that WTU believes that the 10-month CWIP limitation in § 35.26 applies to effective dates, rather than the period between the previous effective date and the filing date of the superseding submittal.

In light of the fact that the proposed rates to TNP and the Cities of Brady and Coleman clearly fail to satisfy the filing requirements and limitations set forth in § 35.26, we agree with the customers that summary action is warranted. However, the portion of WTU's filing for these customers that is not associated with additional CWIP amounts is not precluded by our rules. Therefore, we shall summarily reject the company's cost support and rates for TNP, Brady, and Coleman to the extent that they are based on increased CWIP levels and we shall require WTU to segregate out any remaining rate increases. Rates filed to comply with this summary disposition may become effective, subject to refund, as ordered below.

In addition, we note that WTU requests waiver of § 35.13 of the Commisison's regulations in order to permit it to calculate revenues and rates of return for present Level A rates based upon the pending settlement rates in

[2] The Cooperative and Municipal Wholesale Customers of WTU consist of 15 cooperatives and the City of Brady, Texas.

[3] TNP amended its motion to intervene on November 30, 1984, to include its motion to reject.

[4] The effective dates of the previous CWIP-based rates, filed in Docket No. ER83-694-000, were October 23, 1983 for the TR-1 customers, March 22, 1984 for TNP, and March 24, 1984 for the Cities of Coleman and Brady. 25 FERC ¶ 61,114, *reh.* 26 FERC ¶ 61,041 (1984). Therefore, the earliest dates on which WTU could have filed rates based on increased CWIP levels were January 22 and January 24, 1985, for TNP and Coleman/Brady, respectively.

Docket No. ER83-694-000. In view of the facts that the settlement in Docket No. ER83-694-000 is uncontested and that no intervenors in this docket have opposed WTU's request, we find good cause to grant WTU's request for waiver of section 35.13 of the regulations as ordered below.

Motions for Summary Disposition

Our preliminary review confirms that the amount of WTU's proposed Level B revenues is higher than the revenue requirement in WTU's cost of service study (Statement BK). The company has attempted to explain this discrepancy in its answer to the Cooperatives' pleading, stating that the mismatch results from a difference between calculated fuel revenues and allocated fuel expenses in the cost of service. However, despite the use of different rate design or cost allocation methodologies, a utility may not recover revenues in excess of the revenue requirement determined in the cost of service study submitted in Statement BK. Accordingly, we shall order summary disposition with respect to this issue. Because the revenue impact of this decision is relatively small, we shall not require WTU to refile its rates to the TR-1 tariff customers at this time. However, since we are requiring WTU to refile its rates to TNP, Brady, and Coleman to reflect our summary disposition as to the additional CWIP amounts claimed, we shall require the company to reflect this summary disposition as to WTU's revenue requirement in its refiled rates for those customers.

With respect to the CWIP facilities information, § 35.13(h) (Statement AG) requires the filing utility to state the electric utility component balances in Accounts 107 and 120.1, individually and in total, for each item of construction work in progress for pollution control facilities, fuel conversion facilities, or any other facilities that qualify for inclusion in rate base under § 35.26. While WTU's work papers provide the required break-down of the claimed pollution control CWIP by item or project, our review indicates that WTU has not provided this information as to its non-pollution control CWIP. Although we do not believe that this omission warrants rejection of the filing, we shall require WTU to file information identifying its CWIP by item and project within 30 days of the date of this order.

The remaining requests for summary disposition will be denied. These issues, as well as other matters raised by the intervenors, present questions of law or fact more appropriately resolved on the basis of an evidentiary hearing.

Matters Set for Hearing

The proposed rates also contain two sets of provisions relating to Qualifying Facilities (QFs). The provision pertaining to company transactions with (QFs) is incorporated in the proposed fuel adjustment clauses (FACs). It provides for recovery of the actual identifiable fuel-related Account 151 and Account 518 cost associated with energy purchased from QFs. Since it is unlikely that QF energy sources will account for fuel costs using the Commission's Uniform System of Accounts, we shall set this rate provision for investigation so that it may be clarified. The other provisions pertain to wholesale customers' transactions with QFs and establish various notice, information, compensation, and system protection requirements designed to protect WTU's interests. The issue of the propriety of the incorporation of these requirements in WTU's wholesale rate schedules and their reasonableness in terms of technical necessities and potential for discrimination shall also be set for investigation.

The proposed FACs provide for the recovery of the total costs of company purchases of economic power as defined by section 35.14(a)(11). Although the FACs also specify that purchases from other systems for reliability purposes are generally made to maintain at 15% capacity reserve above the anticipated annual system peak load, the language does not clearly prohibit the recovery of costs for economic power purchases which also permit the company to maintain its 15% reserve margin. Additionally, the language is vague and does not give the specifics of how economic/reliability purchase criteria will be implemented on a day to day basis. Accordingly, these provisions shall be set for investigation.

Our preliminary review of WTU's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept WTU's rates for filing, as modified by summary disposition and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant proceding, our review suggests that WTU's Level A rates may not produce substantially excessive revenues. Accordingly, we shall suspend the proposed Level A rates, as modified by summary disposition, to become effective, subject to refund, on January 1, 1985.[5] Our review further indicates that the Level B rates may yield substantially excessive revenues. Accordingly, we shall suspend the proposed Level B rates, as modified by summary disposition, for five months, to become effective, subject to refund on June 1, 1985.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Cooperatives.

The Commission orders

(A) The motions to reject WTU's filing in its entirety are hereby denied. Summary disposition is hereby ordered, as noted in the body of this order, with respect to WTU's inclusion of increased CWIP amounts for TNP and the Cities of Brady and Coleman. WTU shall refile its cost of service and rates in accordance with this summary disposition and those ordered in Paragraph (B) below within thirty (30) days of the date of this order.

(B) Summary disposition is also ordered, as noted in the body of this order, with respect to: (1) That amount of WTU's proposed Level B revenues which are above the revenue requirement in WTU's cost of service study (Statement BK); and (2) WTU's failure to provide a break-down of its claimed non-pollution control CWIP by item or project. WTU shall reflect the summary disposition with respect to its revenue requirement for its TR-1 tariff customers in its compliance cost of service and rates at the conclusion of this proceeding. Within thirty (30) days of the date of this order, WTU shall file additional information identifying its CWIP by item or project.

(c) All other motions for summary disposition are hereby denied.

(D) WTU's request for waiver of § 35.13 of the Commission's regulations is hereby granted insofar as is necessary to permit WTU to calculate the Period I cost of service by reference to the settlement rates in Docket No. ER83-694-000.

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[5] Under the terms of the pending settlement agreement between WTU, the 15 tariff customers and the City of Brady, if WTU files an increase in rate after July 31, 1984, and requests a suspension until January 1, 1985, the customers agree to support the requested suspension and effective date. WTU's proposed Level A rates are intended to qualify for the January 1, 1985, effective date under the settlement provision. The pending settlement with TNP does not contain a rate change provision.

(E) WTU's proposed Level A rates are hereby accepted for filing, as modified by summary disposition, and are suspended for one day to become effective, subject to refund, on January 1, 1985. WTU's proposed Level B rates are hereby accepted for filing, as modified by summary disposition, and are suspended for five months, to become effective, subject to refund, on June 1, 1985.

(F) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commisison's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR Chapter I], a public hearing shall be held concerning the justness and reasonableness of WTU's rates.

(G) The Commission staff shall serve top sheets in this proceeding within tne (10) days of the date of this order.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as providedin the Commission's Rules of Practice and Procedure.

(I) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretory.

ATTACHMENT A.—WEST TEXAS UTILITIES COMPANY DOCKET NO. ER85-81-000

[Rate Schedule Designations]

Designation	Description	Effective dates
(1) Thirteenth Revised Sheets Nos. 4 through 7 under FERC Electric Tariff, Original Volume No. 1 (Supersedes Twelfth Revised Sheets Nos. 4 through 7 and Original Sheet No. 5.1).	Tariff customers (Level A, TR-1 rates)	Jan. 1, 1985.
(2) Fourteenth Revised Sheets Nos. 4 through 7 under FERC Electric Tariff, Original Volume No. 1 (Supersedes (1) above).	Tariff customers (Level B, TR-1 rates)	June 1, 1985.
(3) Third Revised Sheet Nos. 8 and 9 under FERC Electric Tariff, Original Volume No. 1 (Supersedes Second Revised Sheet Nos. 8 and 9).	Tariff customers (Terms and conditions)	Jan. 1, 1985.
(4) Supplement No. 18 to Rate Schedule FPC No. 39 (Supersedes Supplement Nos. 16, 17 and Supplement No. 1 to Supplement No. 14).	Texas-New Mexico Power Co. (Level A, TNP-4)	Do.
(5) Supplement No. 19 to Rate Schedule FPC No. 39 (Supersedes (4) above)	Texas-New Mexico Power Co. (Level B, TNP-4)	June 1, 1985.
(6) Supplement No. 11 to Rate Schedule FPC No. 40 (Supersedes Supplement Nos. 9 and 10)	City of Coleman, Texas (Level A, COC-4 rates)	Jan. 1, 1985.
(7) Supplement No. 12 to Rate Schedule FPC No. 40 (Supersedes (6) above)	City of Coleman (Level B, COC-4 rates)	June 1, 1985.
(8) Supplement No. 11 to Rate Schedule FPC No. 42 (Supersedes Supplement Nos. 9 and 10)	City of Brady, Texas (Level A, COB-4 rates)	Jan. 1, 1985.
(9) Supplement No. 12 to Rate Schedule FPC No. 42 (Supersedes (6) above)	City of Brady, Texas (Level B, COB-4 rates)	June 1, 1985.

[FR Doc. 85-141 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: December 26, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On December 24, 1984, the Commission received notice from MMS, Pacific OCS Region, that on October 17, 1984, MMS issued twenty-three leases from OCS Sale No. 80. These leases have been determined to qualify under NGPA section 102(c)(1)(A) as new OCS leases granted on or after April 20, 1977, pursuant to order No. 336, and are identified as follows:

Oil and Gas Sale No. 80 of Oct. 17, 1984

Lease No. OCS-P	Legal description	Effective date
0511	Map 6A, 55N 87W	Dec. 1, 1984.
0512	Map 6A, 54N 82W	Do.
0513	Map 6A, 51N 72W	Do.
0514	Map 6A, 50N 83W	Do.
0515	Map 6A, 49N 84W	Do.
0516	Map 6A, 49N 83W	Do.
0517	Map 6A, 49N 80W	Do.
0519	Map 6B, 51N 70W	Do.
0520	Map 6B, 51N 62W 51N 63W	Do.
0521	Map 6B, 50N 62W	Do.
0522	Map 6B, 49N 66W	Do.
0523	Map 6B, 49N 65W	Do.
0524	Map 6B, 48N 65W	Do.
0525	Map 6B, 48N 64W	Do.
0527	Map 6B, 46N 62W	Do.
0528	Map 6B, 41N 54W	Do.
0529	Map 6B, 40N 54W	Do.
0530	Map 6B, 40N 53W	Do.
0531	Map 6B, 38N 68W	Do.
0532	Map 6B, 37N 68W	Do.
0533	NH 11-1, Block 69	Do.
0534	NH 11-1, Block 113	Do.
0535	NH 11-1, Block 114	Do.

The notice of determination for these leases is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations

may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-142 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: December 28, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On December 3, 1984, the Commission received notice from MMS, Gulf of Mexico OCS Region, that on July 18, 1984, MMS conducted OCS lease Sale 84 for the Western Gulf of Mexico. Included in this offering were lease numbers OCS-G 7125 through OCS-G 7526. With the exception of the forty-one leases identified below, the leases identified by the OCS numbers in this range have been determined to qualify under NGPA section 102(c)(1)(A) as new OCS leases granted on or after April 20, 1977, pursuant to Order No. 336.

Bids for the following areas were rejected and, as a result, the leases for these areas have not been issued:

Lease No.	Area	Block	Status
OCS-G 7142	North Padre Island	989	Rejected bid.
OCS-G 7145	do	932	Do.
OCS-G 7149	do	027A	Do.
OCS-G 7151	do	043A	Do.
OCS-G 7156	do	060A	Do.
OCS-G 7172	Mustang Island	855	Do.
OCS-G 7183	do	033A	Do.
OCS-G 7188	do	112A	Do.
OCS-G 7190	do	114A	Do.
OCS-G 7191	do	134A	Do.
OCS-G 7197	Matagorda Island	564/591	Do.
OCS-G 7203	do	634	Do.
OCS-G 7208	do	650	Do.
OCS-G 7204	do	688	Do.
OCS-G 7211	do	000A	Do.
OCS-G 7226	Brazos	021A	Do.
OCS-G 7230	do	051A	Do.
OCS-G 7237	Galveston	222	Do.
OCS-G 7259	do	101A	Do.
OCS-G 7278	High Island	156	Do.
OCS-G 7282	do	178	Do.
OCS-G 7287	do	230	Do.
OCS-G 7291	do	236	Do.
OCS-G 7294	do	044A	Do.
OCS-G 7296	do	059A	Do.
OCS-G 7307	do	130A	Do.
OCS-G 7316	do	156A	Do.
OCS-G 7322	do	186A	Do.
OCS-G 7323	do	195A	Do.
OCS-G 7329	do	246A	Do.
OCS-G 7341	do	513A	Do.
OCS-G 7342	do	519A	Do.
OCS-G 7347	do	565A	Do.
OCS-G 7354	do	272A	Do.
OCS-G 7359	do	314A	Do.
OCS-G 7361	do	352A	Do.
OCS-G 7363	do	358A	Do.
OCS-G 7368	do	379A	Do.
OCS-G 7383	East Breaks	112	Do.
OCS-G 7384	do	117	Do.
OCS-G 7442	Garden Banks	153	Do.

The notice of determination for these leases is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-143 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-113-000]

William G. Brown; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 28, 1984.

On November 29, 1984, Willaim G. Brown (Applicant) of 5129 Andrea Blvd. No. 33, Sacramento, California 95842 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. On December 18, 1984, applicant submitted a supplementary filing. No determination has been made that the submittal constitutes a complete filing.

The 250 kW facility will be located next to Rancho Seco Nuclear Power Plant in Rancho Seco, California. The facility will use waste heat from the nuclear plant's cooling water as a primary energy source.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-145 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-119-000]

Corn Products; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On December 3, 1984, Corn Products of Moffett Technical Center, P.O. Box 345, Summit-Argo, Illinois 60501, 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 is located at 6400 Archer Road, Bedford Park, Illinois. The primary energy source is coal. The existing facility consists of three coal fired steam boilers, two stand by gas fired steam boilers and three steam turbine/generators. The proposed addition to the existing facility consists of a power house containing two new steam turbine/generators. The electric power production capacity of the facility will be 40 MW. The exhaust steam from the turbines is used in the drying of corn starch and co-products. The proposed addition to the facility is scheduled to begin in January 1986.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-146 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-121-000]

Energy Development & Construction Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 28, 1984.

On December 5, 1984, Energy Development & Construction Corporation of 745 Fifth Avenue, New York, New York 10151-0008, 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 in Riverside County, California. The primary energy source will be wind. The facility will consist of wind turbine generators with a total power production capacity of approximately 10-12 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intevene 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-148 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-412-001]

New Hanover County; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 28, 1984.

On December 6, 1984, New Hanover County, (Applicant), of 320 Chestnut Street, Wilmington, North Carolina 28401, 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 at 3002 Highway 421 North, Wilmington, North Carolina 28405. The facility will use municipal solid waste to generate electric power. The net electric power production of the facility will be 3,675 kW which will be sold to North Carolina Power and Light Company. The facility started its operation in July 1984.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-151 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-116-000]

Northern Cogeneration One Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On December 3, 1984, Northern Cogeneration One Company (Applicant), of 2223 Dodge Street, Omaha, Nebraska 68101, 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 near the existing Union Carbide Corporation chemical plant in the vicinity of Texas City, Galveston County, Texas. The facility will contain three 100 MW combustion turbine-generators, three heat recovery steam generators, and one 141 MW auto-extraction/condensing steam turbine-generator. The extracted steam will be utilized by the Union Carbide Corporation chemical plant for its process requirements. The maximum

electric power production capacity of 441 MW is expected to be sold to Houston Lighting and Power Company. The primary energy source will be natural gas. Installation of the facility is expected to begin in June 1985.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-152 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-102-000]

Stone Container Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On November 26, 1984 Stone Container Corporation of 360 N. Michigan Avenue, Chicago, Illinois 60601 (Applicant), 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 is located at the Stone Container Corporation, Old Georgetown Road, Florence, South Carolina 29502. The facility contains one 600,000 lbs/hr boiler at 1500 psig and one double automatic extraction/condensing steam-generator. The extracted steam will be used for process at the pulp and paper-board mill. The power production capacity of the facility will be 58,000 kW. The primary fuel will be wood waste supplemented with pulverized coal. The construction of the facility is expected to begin in first quarter of 1985.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-154 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-110-000]

Thermo Power and Electric, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On November 28, 1984, Thermo Power and Electric, Inc. of 1163 Vine Street, Denver, Colorado 80206 (Applicant), submitted for filing an application for certification of a facility as a qualifiying 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 at the University of Northern Colorado in Greeley, Colorado. The facility will consist of two combustion turbine generator sets with two waste heat recovery boilors used to generate hot water and steam for process use and for input to a condensing steam turbin generator set. The primary fuel will be natural gas. The total electric power production capacity will be 63.3 megawatts. The useful thermal output will be used for hot water and steam generation for heating, cooling, laboratory, and other process use. Construction is scheduled to begin at the site about January 1986.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-155 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-108-000]

Tretolite, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On November 28, 1984, Tretolite, Inc. (Applicant), 13200 Bay Park Road, Pasadena, Texas 77507 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. On December 3, 1984, applicant submitted supplemental information. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the applicant's address in Pasadena, Texas. The facility will contain three 450 kW combustion turbine-generators and three 3975 lbs/hrs heat recovery boilers. Saturated steam at 150 psi from the boilers will be used in various plant chemical processes. The electric power production of the facility will be 1350 kW. The surplus power over use at Tretolite, Inc. will sold to the Houston Power and Light Company. The primary energy source will be natural gas.

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 protestant 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-156 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-130-000]

Vicon Recovery Systems, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 28, 1984.

On December 10, 1984, Vicon Recovery Systems, Inc. (Applicant) of 10 Park Place, Butler, New Jersey 07405, 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 in Rutland, Vermont. The primary energy source will be solid waste. Oil will be used as a supplementary fuel primarily for start-up and preheating. The facility will consist of two incinerators, two waste heat boilers, and a 7 megawatt steam turbine/generator.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-157 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-114-000]

Warren Petroleum Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 28, 1984.

On November 30, 1984, Warren Petroleum Company (Applicant) of P.O. Box 1589, Tulsa, Oklahoma 74102 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 proposed topping-cycle cogeneration facility will be located in the Applicant's Mont Belvieu Fractionation Plant, Mont Belvieu, Texas. The facility will consist of a 60 MW natural gas combustion turbine/generator and a waste heat recovery boiler. The produced steam is for plant use. Supplementary burning of natural gas will be required to meet the total steam needs for the plant. Installation of the facility is planned to begin in January 1987.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-158 Filed 1-2-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[W-4-FRL-2748-7]

Availability of the Saltwater Wetlands for Wastewater Management Environmental Assessment

AGENCY: Environmental Protection Agency.

ACTION: Announcing the availability of the Saltwater Wetlands for Wastewater Management Environmental Assessment (EPA 904/10-84 128).

SUMMARY: EPA, Region IV recently completed an environmental assessment addressing the use of saltwater wetlands for wastewater management in the southeastern United States. The emphasis of the Saltwater Wetlands for Wastewater Management Environmental Assessment is to provide a description of key saltwater wetland factors, current disposal practices, disposal options, regulatory considerations and areas where additional wetland wastewater management research is needed.

ADDRESS: Copies of the Saltwater Wetlands Assessment may be obtained by contacting: Mr. Ronald J. Mikulak, Project Officer, Environmental Assessment Branch, EPA-Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (Commercial Phone Number: 404/881-3776, FTS Number: 257-3776).

Dated: December 17, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 85-91 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

[AAA-FRL-2748-5]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office.

Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of December 21, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: December 19, 1984.

John A. Gwynn,

Acting Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A. C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007-00	D	04-12-84	04-11-87	§ 32.200(a)(c)(f).
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	06-17-83	06-16-86	§ 32.200(a)(b)(e)(f).
Ashland-Warren, Inc. (McMinville, TN)	82-0401	D	09-22-82	05-06-85	§ 32.200(a)(e).
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-00	D	08-02-83	08-01-86	§ 32.200(a).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	S	12-02-83	Open	§ 32.300(b).
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	04-12-84	04-11-87	§ 32.200(a)(c)(f).
Bowe, Walsh and Associates, Inc. (Melville, NY)	83-0040-00	D	04-14-83	04-13-86	§ 32.200(a)(e).
Bowers Excavating and Fencing, Inc. (Klamath Falls, OR)	83-0058-00	D	06-27-83	12-27-84	§ 32.200(b)(e)(f).
Bowers, Joe (Klamath Falls, OR)	83-0058-01	D	06-27-83	12-27-84	§ 32.200(b)(e)(f).
Bowers, John (Klamath Falls, OR)	83-0058-02	D	06-27-83	12-27-84	§ 32.200(b)(e)(f).
Croft, William A. (Madison, WI)	83-0047-00	S	06-20-84	06-19-87	§ 32.200(a).
Dakota Contracting Corp. (Sioux Falls, SD)	85-0002-00	S	11-02-84	Open	§ 32.200(a)(b).
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	04-14-83	04-13-86	§ 32.200(a)(b).
Friedrich, Rene (Saratoga, CA)	83-0003-01	VE	12-23-83	12-22-84	§ 32.200(a).
Gabey, Martin (Northport, NY)	83-0040-02	D	12-16-83	12-15-86	§ 32.200(a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	04-12-84	04-11-87	§ 32.200(c)(f).
Harry Johnson Plumbing Company, Inc. (Walla Walla, WA)	83-0060-00	D	07-22-83	07-21-86	§ 32.200(b)(c)(e)(f).
Herbert G. Whyte, Associates, Inc. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200(b)(e).
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-84	10-10-87	§ 32.200(a).
Hunter, James C. (Gardena, CA)	83-0002-02	D	07-07-83	07-06-86	§ 32.200(a)(f).
Insulation Specialty and Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(c)(f).
Jackson, Manly (San Jose, CA)	83-0048-02	D	06-27-83	06-26-86	§ 32.200(a).
James Gilbert Randle & Assoc. (East St. Louis, IL)	84-0015-00	VE	09-18-84	01-31-85	§ 32.200(a).
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	07-22-83	07-21-86	§ 32.200(b)(c)(e)(f).
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	04-12-84	04-11-87	§ 32.200(c)(f).
Keller, John (Tenonium, MD)	83-0048-01	D	09-09-83	03-08-85	§ 32.200(a).
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(c)(f).
L.A. Reynolds Company (Winston Salem, NC)	83-0036-00	D	07-01-83	06-30-86	§ 32.200(a).
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	07-07-83	07-06-86	§ 32.200(a).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	04-12-84	04-11-87	§ 32.200(c)(f).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(f).
	82-0408				
Newman, Fred M. (Vienna, VA)	83-0072-01	D	09-30-83	09-29-86	§ 32.200(f).
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-29-83	11-28-86	§ 32.200(a).
Post-Tensioning Service Corporation (Saratoga, CA)	83-0001-00	D	07-06-83	07-07-86	§ 32.200(a).
Ranco (East St. Louis, IL)	84-0015-03	VE	09-18-84	01-31-85	§ 32.200(a).
Randle-Flagg (East St. louis, IL)	84-0015-02	VE	09-18-84	01-31-85	§ 32.200(a).
Randle, James Gilbert (East St. Louis, IL)	84-0015-01	VE	09-18-84	01-31-85	§ 32.200(a).
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	07-01-83	06-30-86	§ 32.200(a).
Richmond, Elwood P. (Grand Forks, ND)	83-0006-01		06-06-83	06-05-86	§ 32.200(a)(f).
Richmond Engineering, Inc. (Grand Forks, ND)	83-0006-00		06-06-83	06-05-86	§ 32.200(a)(f).
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0006-02	D	06-06-83	06-05-86	§ 32.200(a)(f).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	05-17-84	05-16-87	§ 32.200(a).
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	05-18-84	05-17-87	§ 32.200(a).
Shepherd, Frank A. (Savannah, TN)	83-0046-01	D	07-15-83	11-03-85	§ 32.200(a).
Stone, Francis (Swanzey, NH)	83-0007-04	D	04-12-84	04-11-87	§ 32.200(a)(c)(f).
Stressteel Corporation (Wilkes-Barre, PA)	83-0007-04	D	08-02-83	02-01-85	§ 32.200(a).
Suburban Grading and Utilities, Inc. (Norfolk, VA)	83-0022-00	D	03-29-83	03-28-85	§ 32.200(a).
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a).
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	07-08-83	07-07-86	§ 32.200(a).
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	04-14-83	04-13-86	§ 32.200(a).
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	06-27-83	06-26-86	§ 32.200(a).
Whyte, Herbert G. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200(b)(e).
Wirt, David (Douglasville, GA)	82-0601	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(f).
	82-0408				
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e)(f).
Womack, Jerry T. (Norfolk, VA)	83-0022-01	D	03-29-83	03-28-85	§ 32.200(a).
Zeigler, Beaty Stevens	83-0045-01	VE	07-15-83	08-31-86	§ 32.200.

[FR Doc. 85-90 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

Commonwealth of Pennsylvania; Determination of Drinking Water Primary Enforcement Responsibility

[W-3-FRL-2748-6]

Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act (Pub. L. 93-523, December 16, 1974, 88 Stat. 1661; 42 U.S.C. 300f et seq, as amended) and 40 CFR 142.10, the National Interim Primary Drinking Water Regulations (41 FR 2918, January 20, 1976) that Mr. Nicholas DeBenedictus, Secretary of the Pennsylvania Department of Environmental Resources, has submitted an application requesting primary enforcement responsibility under the Safe Drinking Act (SDWA) to the U.S. Environmental Protection Agency (EPA) Region III office for concurrence and approval.

Thomas P. Eichler, Regional Administrator for EPA Region III, has approved this application from the Commonwealth of Pennsylvania for primary enforcement responsibility. This determination shall become effective on February 4, 1985, and was based upon a thorough evaluation of Pennsylvania's water supply supervision program which

has met the various requirements stated in 40 CFR 142.10. The Commonwealth has shown that they have:

- Adopted and implemented primary drinking water regulations no less stringent than the national interim primary drinking water regulations;
- Procedures to maintain an inventory of public water systems;
- A systematic program for conducting sanitary surveys on public water systems;
- A program for certifying laboratories who conduct analytical measurements of drinking water contaminants;
- Laboratory facilities certified by EPA for conducting all required analytical measurements;
- A program activity to assure proper design and construction of new or substantially modified public water system facilities;
- Authority to compel compliance with the State's drinking water standards;
- Authority to sue in courts and to enjoin continuing violations;
- Authority to permit right of entry and inspection of public water systems;
- Authority to require public water systems to keep appropriate records and make appropriate reports to the State;
- Authority to require public notification of regulatory violations; or when circumstances make a more immediate notice appropriate, provide notice to protect public health;
- Authority to assess civil or criminal penalties for violation of the State's drinking water regulations or public notification requirements including multiple penalties for continuing violations;
- Established and will maintain records and reports of its activities pursuant to 40 CFR 142.14 and 142.15 of the Federal regulations;
- Developed a system for issuing variances and exemptions;
- Adopted a plan for the provision of safe drinking water under emergency circumstances.

Pennsylvania's water supply supervision program, as presented and evaluated on the above noted points, has indicated that it is fully capable of carrying out all the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before February 4, 1985. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Thomas P. Eichler, Regional Administrator, U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pa. 19106.

A request for a public hearing shall include the following information:

1. The name, address, and telephone number of the individual(s) organization(s), or other entity requesting a hearing.
2. A brief statement of the requesting person's interest in the Regional Administrator's determination, and of information that the requesting person intends to submit at such a hearing.
3. The signature of the individual(s) making the request; or, if the request is made on behalf of an organization(s) or other entity, the signature(s) of a responsible official(s) of the organization(s) or other entity.

Frivilous or insubstantial requests for a hearing may be denied by the Regional Administrator; however, if a substantial request for a public hearing is made within thirty (30) days after this notice, a public hearing will be held. Notice of such a hearing, or on his own motion, will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the Commonwealth of Pennsylvania.

Notice of the hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. In addition to the publication of notice described above, a notice will be sent to the person(s) requesting the hearing as well as to the Commonwealth. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number of an office where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of this order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 4, 1985.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

A complete copy of Pennsylvania's application for primary responsibility is available for public inspection during normal business hours at the office of the Regional Administrator and at the following location in Pennsylvania: Division of Water Supplies, Bureau of Community Environmental Control, Pennsylvania Department of Environmental Resources, Second Floor, Executive House, P.O. Box 2357, Harrisburg, PA 17120.

Dated: November 30, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 85-84 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

[W-4-FRL-2747-8]

Direct Implementation of the Underground Injection Control Program for the State of Tennessee; Withdrawal of Aquifer Exemption Proposal

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of Proposed Aquifer Exemption.

SUMMARY: On July 12, 1984 (49 FR 28453) the Environmental Protection Agency (EPA) proposed an aquifer exemption for specific portions of the Knox Aquifer System in the State of Tennessee for deep well injection purposes. The specific areas are located at three industrial facilities near New Johnsonville and Mt. Pleasant, Tennessee.

After holding public hearings, participating in informational meetings, and reviewing written comments, EPA has determined that insufficient technical data are available to warrant proceeding with the aquifer exemption as proposed. Accordingly, EPA is giving notice that it is withdrawing the aquifer exemption proposed for these areas as published on July 12, 1984 (49 FR 28453).

FOR FURTHER INFORMATION CONTACT: Donald J. Guinyard, Chief, Water Supply Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 881-3866.

Dated: December 19, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 85-88 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL 2747-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Programs

• Title: Nonpoint Source Pollution Assessment Project (EPA #1235).

Abstract: Water pollution control agencies will complete a one-time questionnaire on their nonpoint source water pollution problems and programs. EPA will use the information to develop a national profile on nonpoint pollution, develop technology transfer mechanisms, and determine future program directions.

Respondents: State, interstate, and territorial water pollution control agencies.

Agency PRA Clearance Requests Completed by OMB

EPA #0814, Reporting and Recordkeeping Requirements for Storage and Treatment Facilities, was approved 8/28/84 (received in EPA 12/27/84) (OMB #2050-0009: expires 2/29/85).

EPA #1072, NSPS Recordkeeping and Reporting Requirements for Lead-Acid Battery Manufacturing Plants, was approved 12/12/84 (OMB #2060-0081: expires 12/31/87).

EPA #1127, NSPS Recordkeeping and Reporting Requirements for Asphalt Concrete Plants, was approved 12/12/84 (OMB #2060-0083: expires 12/31/87).

EPA #1128, NSPS Recordkeeping and Reporting Requirements for Secondary Lead Smelters, was approved 12/12/84 (OMB #2060-0080: expires 12/31/87).

EPA #1130, NSPS Recordkeeping and Reporting Requirements for Grain Elevators, was approved 12/17/84 (OMB #2060-0082: expires 12/31/87).

EPA #1223, Use of a DOD-Style System for Collecting Fiscal Status Information from IERL-RTP Contractors, was approved 12/11/84 (OMB #2080-0009: expires 12/31/85).

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223); U.S. Environmental Protection Agency; Office of Standards and Regulations; Regulation & Information Management Division; 401 M Street, SW., Washington, D.C. 20460; and

Rick Otis; Office of Management and Budget; Office of Information and Regulatory Affairs; New Executive Office Building (Room 3228); 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: December 27, 1984.

David Schwarz,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-7 Filed 1-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board Membership

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

DATE: December 17, 1984.

FOR FURTHER INFORMATION CONTACT: Clyde B. Blandford, Jr., Director of Personnel, Federal Labor Relations Authority, 500 C St., SW, Washington, DC 20424 (382-0751).

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor—along with any recommendations, including recommendations with respect to bonuses—to the appointing authority relative to the performance of the senior executive.

The members of the FLRA performance review board are:

1. Harold D. Kessler, Acting Executive Director/Administrator, FLRA (Chairman of PRB)
2. David Feder, Assistant General Counsel (Field Mgmt/Legal Policy), FLRA
3. Ernest Russell, National Labor Relations Board
4. Michael D. Sherwin, Civil Aeronautics Board
5. Jacqueline Bradley, Merit Systems Protection Board.

Dated: December 17, 1984.

Federal Labor Relations Authority.

Clyde B. Blandford, Jr.,

Director of Personnel.

[FR Doc. 85-22 Filed 1-2-85; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

December 28, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact: Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Eecutive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Proposal to Approve Under OMB Delegated Authority the Extension Without Revision of the Following Reports:

1. Report title: Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debts Previously Contracted.

Agency form number: FR 4006.

OMB Docket number: 7100-0129.

Frequency: Annually.

Reporters: Bank Holding Companies.

Small businesses are not affected.

General description of report: This report is mandatory (12 U.S.C. 1843 (c)(2), 1844(c)); confidential treatment of the report may be requested.

Bank holding companies that acquire assets in satisfaction of debts previously contracted are requried by the Board to submit an annual report outlining the efforts made to date to effect divestiture of the assets, as well as a description and valuation of assets divested and those to be divested.

2. Report title: Domestic Branch Application

Agency form number: FR 4001.

OMB Docket number: 7100-0097.

Frequency: On occasion.
Reporters: State member banks.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Any state member bank wanting to establish a branch must receive the approval of the Federal Reserve Board.

3. Report title: Investment in Bank Premises Application
Agency form number: FR 4014.
OMB Docket number: 7100–0139.
Frequency: On occasion.
Reporters: State member banks.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 371 (d)) and is not given confidential treatment.

A state member bank that wants to make an investment in bank premises when (a) the amount invested will cause the bank's total investment in bank premises to exceed the bank's capital stock or (b) the bank's total investment in premises already exceeds the capital stock, the approval of the Federal Reserve is required.

4. Report title: Application to Issue Capital Notes or to Reclassify Existing Notes as part of a Bank's Capital Structure.
Agency form number: FR 4015.
OMB Docket number: 7100–0140.
Frequency: On occasion.
Reporters: State member banks.
Small businesses are affected.
General description of report: This information collection is mandatory (12 CFR 217.1(f)(3)(i)) and is not given confidential treatment.

A State member bank that wants to issue capital notes or to reclassify existing notes as part of its capital structure must receive the approval of the Federal Reserve Board.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 85–83 Filed 1–2–85; 8:45 am]

BILLING CODE 6210–01–M

Bank of Virginia Co., et al., Formations of; Acquistions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 23, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Virginia Company*, Richmond, Virginia; to acquire 100 percent of the voting shares of Bank of Virginia, N.A. Richmond, Virginia.

2. *United Bankshares, Inc.*, Parkersburg, West Virginia; to acquire 100 percent of the voting shares of the successor by merger to the First National Bank of Ripley, Ripley, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *American National Financial Corporation*, Panama City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The American National Bank, Panama City, Florida.

2. *First City Bancshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First City Bank, New Orleans, Louisiana.

3. *Gulf Coast Holding Company*, Panama City, Florida; to acquire 100 percent of the voting shares of Gulf City National Bank of South Walton, Destin, Florida.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of The Citizens National Bank of Stevens Point, Stevens Point, Wisconsin.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas C'ty, Missouri 64198:

1. *Citibanchares, Inc.*, Muskogee, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Citibanc Holding Company, Muskogee, Oklahoma, thereby indirectly acquiring City Bank, Muskogee, Oklahoma.

2. *Liberty State Bancshares, Inc.*, Tahlequah, Oklahoma; to become a bank holding company by acquiring 85 percent of the voting shares of The Liberty State Bank of Tahlequah, Oklahoma, Tahlequah, Oklahoma.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–81 File 1–2–85; 8:45 am]

BILLING CODE 6210–01–M

National Penn Bancshares, Inc., et al. Applications to engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Intersted 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, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at

a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applciations must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadephia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to engage *de novo* through its subsidiary, National Penn Life Insurance Company, Phoenix, Arizona, in acting as a reinsurer of credit life, health and accident insurance in connection with extensions of credit made by Applicant's bank, National Bank of Boyerstown. These activities will be conducted in the Commonwealth of Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation*, Elk Grove Village, Illinois; to engage directly as an investment or financial adviser to the extent of providing portfolio investment advice including asset quality and liquidity, asset liability and capital mix, and investment guidelines; and furnishing general economic information and advice, general economic statistical forecasting services and industry studies. These activities would be conducted in the State of Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Financial Dominion of Kentucky Corporation*, Radcliff, Kentucky; to engage *de novo* through its subsidiary, Financial Dominion Mortgage Corporation, Radcliff, Kentucky, in the origination of first mortgage loans for the account of other nonrelated permanent institutional lenders.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-82 Filed 1-2-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

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

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve the extension of two information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, D.C. 20505.

FOR FURTHER INFORMATION CONTACT: Charles Renner, Public Buildings Service (202-566-1578).

1. *Purpose.*

a. *Certification of Payment to Subcontractors and Suppliers.* This collection provides certification by the contractor of timely payments made to subcontractors and suppliers. Respondents 2,000; responses 16,000; hours 800.

b. *Release of Claims.* Information from this collection is used to secure a release of claims by the contractor against the Government. Respondents and responses 2,000; hours 200.

2. *Obtaining copies of proposals.* Copies of these proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, D.C. 20405 (202-566-0666).

Dated: December 26, 1984.

Johnny Young,

Acting Director, Information Management Division.

[FR Doc. 85-17 Filed 1-2-85; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee Diesel Subgroup; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Diesel Subgroup of the Mine Health Research Advisory Committee (MHRAC)

Date: January 18, 1985.

Place: Room 503-529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Time: 9:00 a.m. to 4:30 p.m.

Purpose: This subgroup of the Committee is charged with determining if there is a scientific basis for developing a recommendation on the use of diesel equipment in underground mining operations and defining the limitations of current knowledge and recommending areas of research for NIOSH, if any, taking into account ongoing and planned research of others. Agenda items for the meeting will include discussion of the various aspects of the diesel issue and planning for a follow-up public meeting to receive comments from all interested parties. Agenda items are subject to change as priorities dictate.

Viewpoints and suggestions from users of diesel equipment, manufacturers of diesel equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the presentation should be provided to the subgroup chairperson, Mr. William Burgess, Polaroid Corporation, 300 Fifth Avenue—5H, Waltham, Massachussets 02254, prior to or at the subgroup meeting.

Contract Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329-3343.

The Mine Health Research Advisory Committee was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secterary of Health and Human Services on matters involving or relating to mine health research. The subgroup, composed of members of the Committee, will provide a report to the full Committee at a future meeting.

Dated: December 28, 1984.

James O. Mason, M.D.Ph.D.

Director, Centers for Disease Control.

[FR Doc. 85-189 Filed 1-2-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84M-0410]

Centers for Disease Control; Premarket Approval of the CDC Biological Standard for Alpha-Fetoprotein in Mid-Pregnancy Maternal Serum

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by the Centers for Disease Control, Atlanta, GA, for premarket approval, under the Medical Device Amendments of 1976, of the CDC Biological Standard for Alpha-fetoprotein in Mid-Pregnancy Maternal Serum. After reviewing the recommendation of the Immunology

Devices Panel (formerly the Immunology Device Section of the Immunology and Microbiology Devices Panel), FDA notified the applicant that FDA approved the application because the applicant had shown the device to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by February 4, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On January 3, 1983, the Centers for Disease Control, Atlanta, GA 30333, submitted to FDA an application for premarket approval of the CDC Biological Standard for Alpha-fetoprotein in Mid-Pregnancy Maternal Serum, a calibrator for alpha-fetoprotein in mid-pregnancy maternal serum. The device is an in vitro device indicated for use as a calibrator of manufacturer and laboratory prepared reference standards for radioimmunoassays expressed in World Health Organization International Units per milliliter (IU/mL) or in nanograms per milliliter (ng/mL) of alpha-fetoprotein (AFP) concentration in maternal serum in relation to the determination of AFP levels as an aid in the detection of fetal open neural tube defects (ancencephaly and open spina bifida). On May 23, 1983, the then Immunology Device Section of the Immunology and Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. [On April 24, 1984, the Immunology Device Section of the Immunology and Microbiology Devices Panel was terminated. Concurrently, FDA established the Immunology Devices Panel (see 49 FR 17446; April 24, 1984).] On November 30, 1984, FDA approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at the Center for Devices and Radiological Health—contact S.K. Vadlamudi (HFZ–440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (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 of 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 adminstrative 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 issue 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 February 4, 1985, 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: December 24, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16 Filed 1–2–85; 8:45 am]

BILLING CODE 4160–01–M

Suldixine™ (Sulfadimethoxine) Injection; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Bayvet Division of Miles Laboratories, Inc., for use of Suldixine™ (sulfadimethoxine) Injection 10% for treatment of susceptible bacterial infections in dogs. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 304–443–1846.

SUPPLEMENTARY INFORMATION: Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee, KS 66201, is sponsor of NADA 32–336 for Suldixine™ (sulfadimethoxine) Injection 10%. The drug is used for the treatment of susceptible bacterial infections in dogs. The NADA was originally approved July 21, 1967. Approval of this NADA is codified in 21 CFR 522.2220(b). By letter of October 10, 1984, the sponsor requested withdrawal of approval of the NADA under 21 CFR 514.115(d) and waived an opportunity for hearing because the drug is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) 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 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 32–336 for Bayvet Suldixine™ (sulfadimethoxine) Injection 10% is hereby withdrawn, effective January 14, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing that part of the regulation that reflects this approval.

Dated: December 26, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–12 Filed 1–2–85; 8:45 am]

BILLING CODE 4160–01–M

Micro Blenders, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Micro

Blenders, Inc. The NADA's cover a premix containing 10 grams of tylosin per pound for making complete swine, beef cattle, and chicken feeds; a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds; and a premix containing 0.6 gram per pound hygromycin B for making complete swine and chicken feeds. The firm's former owner/president has indicated that the company filed for bankruptcy and is no longer in existence.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Micro Blenders, Inc., formerly located at Highway 2109 East at 291, P.O. Box 357, Liberty, MO 64068, is the sponsor of NADA 123-065 for a 10-gram-per-pound tylosin (as tylosin phosphate) premix for making complete feeds for swine, beef cattle, and chicken for use as in 21 CFR 558.625(f)(1) (i), (iii), (iv), and (vi), originally approved on November 28, 1980 (45 FR 79027); NADA 128-617 for a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds for use as in 21 CFR 558.630(f)(2)(ii), originally approved on March 12, 1982 (47 FR 10808); and NADA 128-618 for 0.6-gram-per-pound hygromycin B premix for making complete feeds for chickens and swine for use as in 21 CFR 558.274(e)(1) (i) and (ii), originally approved on April 30, 1982 (47 FR 18593).

The former owner/president of Micro Blenders, Inc., has informed FDA that Micro Blenders, Inc., filed for Bankruptcy and is no longer in existence, and the NADA's held were considered abandoned.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) 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 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 123-065, 128-617, and 128-618 and all supplements thereto is hereby withdrawn, effective January 14, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect these approvals and is removing Micro Blenders, Inc., from the list of sponsors of approved NADA's.

Dated: December 28, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-11 Filed 1-2-85; 8:45 am]

BILLING CODE 4160-01-M

Ralston Purina Co.; Filing of Food Additive Petition

Correction

In FR Doc. 84-27854 appearing on page 49181 in the issue of Tuesday, December 18, 1984, make the following correction:

In the first column, in the "summary" paragraph, last line, "bean" should have read "beam".

BILLING CODE 1505-01-M

Office of Human Development Services

Advisory Board on Child Abuse and Neglect; Meeting

Agency Holding Meeting: Administration for Children, Youth and Families.

Time and Date: 9:30 a.m. to 5:30 p.m.—Tuesday, January 22, 1985.

Place: Department of Transportation, 7th and D Streets, SW., Washington, D.C., Room 6332.

Status: Advisory Board meetings are open for public observation. However, because of security precautions at all Government buildings, persons wishing to attend the meeting, but who do not have Government identification, should call the contact person listed below for information about access to the building.

Matters to be Considered: At this meeting, the Admisory Board will discuss: Amendments to the Child Abuse Prevention and Treatment Act (Pub. L. 98-457); Changes in the Advisory Board's Charter; Coordination Efforts Among Member Agencies; and Plans for the 7th National Conference on Child Abuse and Neglect.

Contact Person for More Information: Arlene Taylor, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C. 20013; (202) 245-2840.

Dated: December 27, 1984.

Carolyn Garnett,

HDS Committee Management Officer.

[FR Doc. 85-96 Filed 1-2-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Disposal of Palm Cockatoos; Sale to Qualified Breeders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of invitation to bid on palm cockatoos and conditions of sale.

SUMMARY: By **Federal Register** Notice dated August 2, 1984 (see 49 FR 31008) the Fish and Wildlife Service (Service) announced the proposed sale of palm cockatoos (*Probosciger aterrimus*) subject to certain conditions. Nine (9) of the birds were not sold because sufficient qualified bids were not received by the closing date.

A number of reputedly qualified breeders have since expressed an interest in the remaining birds. Accordingly, the Service believes there is sufficient interest in the remaining birds to warrant conducting another sale by sealed bid.

DATE: Written bids must be received by February 1, 1985.

ADDRESSES: Written bids may be mailed to Director (LE), Fish and Wildlife Service, P.O Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C., between 7:45 a.m. and 4:15 p.m. Bids should bear the identifying notation REG 12-03-1.

FOR FURTHER INFORMATION CONTACT: A. Eugene Hester, Special Projects Officer, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background

As the result of a complaint for forfeiture *in rem* filed in the United States District Court for the Southern District of Miami, 103 palm cockatoos (*Probosciger aterrimus*) orginating from Indonesia were forfeited to the Fish and Wildlife Service (Service) on February 7, 1984, upon the court's acceptance of a stipulation of settlement negotiated between the parties to the forfeiture action.

The Service's methods and procedures for disposing of live wildlife upon forfeiture appear in 50 CFR 12.30-12.39. These methods include: Return to the wild, retention by the Service for official use, transfer to another government agency for official use, donation or loan, sale, or destruction.

After reviewing alternate means of disposal in light of the relevant information available, the Service has decided that the organization of a formal breeding consortium, as opposed to informal, mutual breeding arrangements commonly use among bird breeders is the most efficient means to establish a captive-breeding population in the United States. To establish this breeding consortium for palm cockatoos, the Service has drafted a document entitled "Breeding Consortium Agreement for Palm Cockatoos (*Probosciger aterrimus*), See Appendix A. This document establishes the goals of the consortium and identifies the rights and responsibilities of its participants. Subject to the requirements of the Breeding Consortium Agreement, the Service will dispose of the palm cockatoos.

Under the authority of 50 CFR 12.37(b), the remaining birds are being offered for sale to zoological institutions and members of the public who, in the opinion of the Service, are qualified to participate in the consortium and who agree to be bound by its terms. The Servive has established a minimum bid of four thousand dollars ($4,000.00) for each set of two birds and limit of two sets to any one bidder. The management committee of the breeding consortium will determine which birds a successful bidder receives and attempt to identify and supply sets made up of sexed pairs.

Invitation to Bid on Palm Cockatoos

Each bidder must mail or deliver in person a written bid to the Service at the address found in the **ADDRESS** block above by the close of business on the date found in the **DATE** block above. Each written bid must contain the following information (please refer to file number REG 12-03-1).

1. Bidder' complete name, mailing address, telephone number, signature, bid price per set, and number of sets bid (one or two sets). No particular government form is required.

2. A minimum bid of four thousand dollars ($4,000.00) per pair has been established with a limit of two (2) pairs to any one bidder.

3. A deposit of twenty percent (20%) of the total amount of the bid must accompany the bid in the form of a money order, certified check, or cashier's check payable to the Fish and Wildlife Service.

4. Include the following statement: "If my bid is accepted, I agree to be bound by the terms and conditions of the 'Breeding Consortium Agreement for Palm Cockatoos (*Probosciger aterrium*)' a copy of which was attached as Appendix A to the Notice of Invitation to Bid on Palm Cockatoos."

5. Answers to the following questions or responses to the following requests about the bidder's avicultural experience:

a. A list of psittacine bird species propagated successfully.

b. A list of cockatoos species propagated successfully.

c. Number of years that bidder has been propagating psittacine birds.

d. Number of years that bidder has been propagating cockatoos.

e. Number of years of general aviculture experience.

f. Experience hand-rearing birds, if any (include species and number reared).

g. A brief summary of the bidder's success in breeding birds over the last 7 years.

h. Other information the bidder believes is relevant to evaluating his/her avicultural experience.

6. Answers to the following questions about how the bidder will care for the birds.

a. How will the birds be housed? Include photographs and floor plans or diagrams of your facilities.

b. Describe bidder's present security arrangements.

c. What specific management program would the bidder implement for the birds if the bid is awarded?

d. What veterinary services are available to the bidder?

Conditions of Sale of Palm Cockatoos

This sale is subject to the following terms and conditions:

1. Telegraphic, telephonic, or oral bids will not be accepted.

2. The Service reserves the right to reject any and all bids. The bidder's qualifications to maintain palm cockatoos will be evaluated independently from the amount of the bid.

3. Bids must be in the possession of the Service by 4:15 p.m. on the date appearing in the Date block above.

4. Bids are not subject to public disclosure before the announcement of award.

5. The birds will not be displayed for inspection before the announcement of award.

6. The palm cockatoos are offered for sale "as is and where is." The Service makes no warranty, express of implied, as to their kind, character, quality, weight, size, sex, health, age, breeding compatibility, or fitness for any use or purpose. No request for adjustment in price or for recession of the sale will be considered. "This is not a sale by sample" The management committee of the breeding consortium will determine which birds a successful bidder receives and attempt to identify and supply sets of sexed pairs.

7. Bidders are responsible for determining whether or not the palm cockatoos may be possessed lawfully in the State where they will be housed.

8. The Service will announce the award of bids as soon as possible after the closing date for receiving bids.

9. The successful purchaser agrees to pay for the birds awarded to the purchaser at the contract price and to sign the Breeding Consortium Agreement for Palm Cockatoos. Both payment of the remaining eighty percent (80%) of the purchase price (payment must be made by money order, certified check, or cashiers check payable to the Fish and Wildlife Service) and a signed copy of the Breeding Consortium Agreement for Palm Cockatoos (hereinafter "Agreement") must be received by the Service within seven (7) days after the successful purchaser receives written notice of the award. The remaining payment of the contract price and the signed Agreement must be sent to the address listed in the **ADDRESS** block above.

10. The birds may not be removed from the custodian now holding them until the Service receives both the remaining payment of the contract price and the signed Agreement, notifies the successful bidder of the time and place to remove the birds from the custodian, and notifies the custodian to release the birds to the purchaser.

11. Custodians of the birds are not responsible for and will not make any removal arrangements. The successful bidder must make the arrangements, including labor for packing, crating, removal, and transportation. The birds' custodian must have written authorization to release property to anyone other than the successful bidder.

12. Failure to make full payment, to sign the Agreement, or to remove the birds awarded from the custodian on the date, place and time specified will result in the purchaser's immediate loss of all right, title, and interest in the property awarded.

13. The bidder (offeror) warrants that he is not delinquent in the payment of any debt due the United States resulting from prior purchase of surplus personal property. In the event the Service determines after award that the bidder breached this warranty, the Service shall have the right to annul the contract without liability.

14. If, after the award, the purchaser breaches the contract by failure to make payment, to sign the Agreement or to

remove the property as required, the purchaser shall lose all right, title, and interest which he might otherwise have acquired in and to such property as to which a default has occurred. The purchaser agrees that in the event he fails to pay for the property or remove the same as required, the Service upon notice of default shall be entitled to retain as liquidated damages a sum equal to 20 percent of the purchase price of the birds as to which the default has occurred. If the purchaser otherwise fails in the performance of his obligations, the Service may exercise such rights and may pursue such remedies as are provided bylaw or under the contract.

15. Fish and Wildlife Service employees are not eligible to bid and no award may be made to such an employee.

16. Any contract dispute resulting from this offering is subject to the Contract Disputes Act of 1978, Pub. L. 95-653, 92 Stat. 2382.

Dated: December 27, 1984.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

Appendix A—Breeding Consortium Agreement for Palm Cockatoos (Probosciger aterrimus)

In order to improve the prospects for maintaining a viable breeding population of the species in captivity, the parties to this agreement pledge to cooperate with each other by managing their respective stocks as a total population, so that ideal pairings can be carried out and the genetic diversity of the captive population can be more fully utilized and maintained.

1. Membership

Membership in the Consortium is open to all holders of palm cockatoos who are willing to participate in this agreement. Upon establishment of this Consortium, initial membership is limited to persons or insitutions deemed qualified by the U.S. Fish and Wildlife Service. The Consortium's Management Committee will review the qualifications of all subsequent applicants to determine if they are to be admitted.

Any member may withdraw from the Consortium at any time upon submitting written notification at least 30 days prior to withdrawal, to the chairman of the Management Committee, and upon transferring any palm cockatoos that are original Service stock to the Management Committee for proper placement.

For purposes of this agreement "original Service stock" means all palm cockatoos transferred or sold by the Service to initial members of the Consortium, but does not include offspring of such birds.

Any member may, upon recommendation of the Management Committee, and (for the first five years after establishment of this Consortium) upon agreement of the Service if original Service stock is involved, be removed from the Consortium if said member has failed to abide by this agreement and thereby has impaired proper development of the stated goals of the Consortium. If a member is so removed, any original Service stock held by that member must be transferred to the Management Committee for proper placement.

2. Management Committee

Operation of the Consortium is guided by a Management Committee consisting of the following:

Eleven respresentatives, one of whom serves as chairman.

A studbook keeper.

Other ad hoc, non-voting participants as deemed necessary by the representatives.

Initially, for a period not exceeding two years, the eleven institutions holding palm cockatoos for the U.S. Fish and Wildlife Service will each appoint a representative to serve on the Management Committee. These representatives will elect one among them to serve as chairman.

Subsequent to this initial period, the members of the Consortium will elect representatives to serve on the Management Committee. Any member of the Consortium may be nominated for election. The Management Committtee representatives should serve staggered three-year terms, established at the first election as follows: (1) The four elected representatives receiving the highest number of votes will serve for three years, (2) four representatives receiving the next largest number of votes will serve for two years, and (3) the three representatives receiving the fewest votes will serve for one year. Thereafter, staggered election is automatic.

The representatives will conduct an election each year to determine which of them will serve as chairman.

3. Studbook

In order to facilitate the planned breeding of this species, it is important to develop a studbook. It should include those specimens held by other persons or institutions, not only members of the Consortium, in the hope that in the future they will make their stock available to be utilized in the best interest of the species concerned.

The Consortium should, therefore, promptly establish a North American regional studbook, based upon AAZPA guidelines and subsequent AAZPA/WCMC approval. The Consortium also should identify and obtain appointment of a studbook keeper as provided in the AAZPA studbook protocol. Initial publication should take place as soon as possible after the establishment of the studbook and should be followed by yearly interim reports.

4. Ownership

The Consortium may hold collective title to palm cockatoos. This does not preclude membership in the Consortium by individual persons or institutions that own palm cockatoos.

5. Transfer of Birds

Members of the Consortium agree to transfer individual palm cockatoos from one collection to another only with the prior approval of the Management Committee.

6. Liability to Consortium

Responsibility for care and health of palm cockatoos covered under this agreement shall be vested in the persons or institutions holding them. All liability, financial or otherwise, shall also rest with the holders, and not with the Consortium.

7. Management Committee Responsibilities

The responsibilities of the Management Committee shall include, but not be limited to, the following:

Development of a master breeding plan for the species, including decisions on the transfer of birds held by members of the Consortium.

Preparation of a comprehensive demographic analysis of the species in North America.

Establishment of dietary and veterinary care guidelines.

Identification of research projects necessary to develop any or all of the above and in particular any pertinent reproductive or behaviorial studies that would enhance captive reproductive efforts.

Overseeing the creation and maintenance of the studbook.

Determining eligibility of candidates for membership in the Consortium and ensuring compliance with this agreement by members.

Establishment of rules for determining ownership of progeny, consistent with the goals of this agreement.

Communication to all Consortium members about Management Committee

actions and decisions in a timely fashion.

8. Consortium Member Responsibilities

The members of this consortium agree to maintain, and not to transfer or sell, any original Service stock for a minimum of five years from the time the Consortium is established, except to transfer birds as decided by the Management Committee.

Terms of this agreement may be amended consistent with the goals stated herein, but only after at least two years have elapsed since the establishment of the Consortium. Amendments will require approval by at least three-fourths of the current membership.

All parties to this agreement reaffirm that the chief objective of the Consortium is to promote the breeding potential of palm cockatoos held in captivity. Further, to achieve this end, all parties to this agreement join in reaffirming their dedication to the conservation objective of establishing as self-sustaining population of this species in capitivity. Once the hoped for goal of maintaining a captive "reservoir" of the species has been achieved, it is the intention of the Consortium to hold the birds subject to this agreement for the preservation, protection and restoration of the species in the wild.

9. Acceptance of Responsibilities

The person or institution named below understands, accepts and is bound by the terms of this breeding consortium agreement, and in consideration for admission to the Consortium agrees with the U.S. Fish and Wildlife Service and other members of the Consortium to promote its objectives in good faith and to participate in accordance with stipulations for membership provided herein.

Name of person or institution

Name and title of person designated as representative to the Consortium

Address Telephone

Signature and title Date

[FR Doc. 85-92 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Nooksack Indian Tribe; Adding Certain Land to the Reservation

November 20, 1984.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the hereinafter described land, located in Watcom County, Washington, was proclaimed to be a part of the Nooksack Indian Reservation, effective November 20, 1984, for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

Willamette Meridian

Township 39 North, Range 5 East, Section 31, Lot 5; more specifically described as a tract of land whose southwest corner is found by starting as the intersection of the centerline of the 16 foot concrete pavement of the Mt. Baker Highway and the centerline of Main Street, according to the "map of the town of Deming, Whatcom County, Washington". Filed for record May 13, 1899; running thence south 71°32' east along the centerline of the said pavement on the Mt. Baker Highway 526.17 feet; thence north 21.09 feet to an intersection with the northerly line of the Mt. Baker Highway, the said point of intersection being the southwest corner of the said tract and the point of beginning; thence north 4°48'40" east, 368.5 feet to the southerly line of the right-of-way of the C.M.ST.P.&P. Railway; thence south 43°25' east along the said southerly right-of-way line 206.3 feet to the northeast corner of the tract owned by Clyde Cook and recorded in volume 199 of deeds, at page 297, records of Whatcom County, Washington, thence south along the east line of the said tract owned by Clyde Cook, 294.66 feet to the northerly line of the said Mt. Baker Highway; thence northwesterly along the northerly line of the said Mt. Baker Highway; 186 feet more or less to the point of beginning; except for the following:

Beginning at the intersection of the centerline of Main Street, with the centerline of the concrete pavement of Mt. Baker Highway as shown on plat of town of Deming, recorded in the Office of the Auditor of Whatcom County, Washington, dated May 13, 1899; thence south 71°32' east along said centerline of paving of Mt. Baker Highway 590.97 feet to the center of a curve; thence continuing along aforesaid centerline of paving on a curve to the right, concave to the southwest having a radius of 955.366 feet for a distance of 121.27 feet, more or less, to its intersection with the southerly prolongation of the easterly line of the Clyde Cook tract, as recorded in deeds, volume 199, page 297, in the Office of the Auditor of Whatcom County, Washington; thence northerly along the southerly prolongation of the easterly line of Clyde Cook tract, recorded as aforesaid, 22.15 feet, more or less, to its intersection with the northerly line of Mt. Baker Highway, being the true point of beginning of the herein described parcel of land; thence continuing northerly along the east line of Clyde Cook tract 36.20 feet to a point; thence north 81°30' West along Puget Sound Power and Light Company's fence 38.80 feet to a fence corner; thence South 10°15' West along said aforesaid company's fence 23.52 feet more or less, to the point of intersection with the northerly line of Mt. Baker Highway; thence along the northerly line of Mt. Baker Highway on a curve to the right concave to the southwest (a radial line to last mentioned point bearing north 22°26'28" East) having a radius of 975.366 feet for a distance of 46.53 feet, more or less, to the true point of beginning, containing 1.23 acres, more or less, subject to all valid existing easements, reservations, and rights-of-way of record.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 85-93 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Realty Action; Recreation and Public Purposes Classification; Kandiyohi County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, ES-31844.

SUMMARY: The following public island has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

T. 122N., R35W., Tract 37: an island in Swan Lake containing 1.70 acres

The Minnesota Department of Natural Resources has applied for this island so that it can be added to Sibley State Park to be used for recreational purposes.

The island is physically suited to the proposed use and is not of national significance. Since the island is valuable for a State program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

The classification of the island will segregate it from all appropriation except as to application under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the State Director, this Realty Action will become the final determination of the Department of Interior.

For further information

Detailed information concerning these applications is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Priscilla McLain at (414) 291–4427.

Wink Hastings,

Acting District Manager.

[FR Doc. 85–23 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–84–M

Roseburg District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet January 25, 1985. The meeting will convene at 9:30 a.m. in the conference room at the Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, Oregon.

The agenda for the meeting will include:

1. Opening remarks and general topics.

2. Funding and program direction for FY 85.

3. Discussion of regional issues affecting BLM.

4. Implementation of the Timber Contract Payment Modification Act.

5. General discussion by Council Members.

6. Public comment period—begins 11:00 a.m.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration.

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

Dated: December 17, 1984.

Melvin D. Berg,

Associate District Manager.

[FR Doc. 85–45 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–84–M

Pipeline Right-of-Way Application; Idaho

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) Chevron Pipe Line Company filed applications for rights-of-way to construct cathodic protection stations for their petroleum pipeline across the following described public lands:

Boise Meridian, Idaho

T. 3 S., R. 7 E.
Section 34, NE¼ (I–21505)
T. 4 S., R. 8 E.,
Section 7, Lot 2, E½NW¼ (I–21506)
T. 2 S., R. 6 E.,
Section 19, E½, E½SW¼ (I–21507)

The pipeline transports petroleum products from Salt Lake City, Utah to Boise, Idaho.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested parties desiring to express their views on this matter should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

Dated: December 18, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 85–24 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–66–M

[Colorado 31573]

Oil and Gas Lease; Proposed Reinstatement, Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease C–31573 for lands in Mesa and Montrose Counties, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1983, the date of termination.

The lease has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee had paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set for in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1983, subject to the original terms and conditions of the lease and increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Barbara Benz of the Colorado State Office at (303) 294–7600.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85–106 Filed 1–2–85; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf Advisory Board; Reestablishment

This notice is published in accordance with the provisions of the General Services Administration's Federal Advisory Committee Management Rules (41 CFR Part 101–6.1015). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Secretary of the Interior has determined that the reestablishment of the Outer Continental Shelf (OCS) Advisory Board is necessary and in the public interest.

The purpose of the OCS Advisory Board is to provide advice to the Secretary of the Interior and other officers of the Department of the Interior in the performance of discretionary functions of the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.), including all aspects of leasing, exploration, development, and protection of the resources of the OCS.

The General Services Administration concurred with the reestablishment of this Board on December 12, 1984.

Further information regarding this reestablishment may be obtained from Michele Tetley, Executive Secretary, OCS Advisory Board, Office of Offshore Information Services, Minerals Management Service, Department of the Interior, Washington, D.C. 20240, 202/343–9314.

Dated: December 20, 1984.

John B. Rigg,

Associate Director, Offshore Minerals Management.

[FR Doc. 85–110 Filed 1–1–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; BelNorth Petroleum Corporation

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD)

SUMMARY: Notice is hereby given that BelNorth Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4416, Block 65, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 14, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 14, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-112 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; The Superior Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0253, Block 149, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 20, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 20, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-111 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3496, Block 206, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on December 21, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to

affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

December 21, 1984.

[FR Doc. 85-115 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCR-G 4758, Block 212, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on December 18, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that is is available for public review.

Revised rules governing practices and procedures under which the Minerals Mangement Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

December 18, 1984.

[FR Doc. 85-116 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Gulf Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given the Gulf Oil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0820, Block 169, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 21, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

December 21, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-114 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0438, Block 175, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on December 21, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Develpment Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13,

1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 20, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-56 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Superior Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6071, Block 494, Brazos Area, Offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on December 20, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 20, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-57 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Gulf of Mexico Outer Continental Shelf; Availability of Final Regional Environmental Impact Statement Regarding Proposed Gulf of Mexico Oil and Gas Lease Sales Nos. 94, 98, and 102

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final regional environmental impact statement (EIS) relating to proposed oil and gas lease Sales Nos. 94, 98, and 102. The proposal involves the offering of all unleased blocks on the Outer Continental Shelf (OCS) in the Gulf of Mexico.

The proposed action for Sale 94 offers for lease all unleased blocks within the Eastern Gulf of Mexico with the exception of the following deferred areas (1.5 million acres): 23 blocks in the Florida Middle Ground; 186 blocks containing seagrass beds; and 99 blocks within the 20m. isobath zone, south of 26°N latitude. The proposed area will consist of approximately 50.8 million acres or 8,911 blocks. The proposed action for Sale 98 offers for lease all unleased blocks within the Central Gulf of Mexico, consisting of approximately 32.9 million acres or 6,107 blocks. The proposed area will consist of approximately 28.7 million acres or 5,173 blocks. The proposed action for Sale 102 offers for lease unleased blocks within the Western Gulf of Mexico with the exception of Blocks A-398 and A-375 in the High Island Area, East Addition, South Extension (11,520 acres).

Single copies of the final regional EIS can be obtained from the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, P.O. Box 7944, 3301 N. Causeway Boulevard, Metairie, Louisiana 70010.

Copies of the final regional EIS will also be available for review in the following public libraries: Austin Public Library, 401 W. 9th Street, Austin, TX; Rosenburg Library, 2310 Sealy Street, Galveston, TX; Brazoria County Library, 410 Brazosport Blvd., Freeport, TX; Texas Southmost College Library, 80 Fort Brown Street, Brownsville, TX; Louisiana State Library, Louisiana State University, Baton Rouge, LA; Calcasieu Parish Library, Downtown Branch, Lake Charles, LA; Mobile Public Library, 701 Government Street, Mobile AL; St. Petersburg Public Library, 3745 North Avenue North, St. Peterburg, FL; Northwest Regional Library System, 25 W. Government Street, Panama City, FL; Houston Public Library, 500 McKinney Street, Houston, TX; Dallas Public Library, 1954 Commerce Street, Dallas, TX; LaRatama Library, 505 Mesquite Street, Corpus Christi, TX; New Orleans Public Library, 219 Loyola Avenue, New Orleans, LA; Lafayette Public Library, 301 W. Congress Street, Lafayette, LA; Harrison County Library, 21st Avenue & Beach Street, Gulfport, MS; Montgomery Public Library, 445 S. Lawrence Street, Montgomery, AL; West Florida Regional Library, 200 West Gregory Street, Pensacola, FL; Leon County Public Library, 127 N. Monroe Street, Tallahassee, FL; Lee County Library, 3355 Fowler Street, Fort Myers, FL; Tampa-Hillsborough County Public Library System, 800 North Ashely Street, Tampa, FL; Charlottee-Glades Regional Library, 801 N.W. Aaron Street, Port Charlotte, FL.

John B. Rigg,

Acting Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 85-26 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-MN-M

National Park Service

Availability of Plan of Operations and Environmental Analysis, Well No. 1 Production Facilities; American Petrofina Co. of Texas, State Tract 181, Laguna Madre, Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from American Petrofina Company of Texas a Plan of Operations for the purpose of installation, operation and maintenance of production facilities for Well No. 1, located within State Tract 181, Laguna Madre, Padre Island National Seashore, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418. Copies of the document are available from Padre Island National Seashore and will be sent, upon request, to individuals or groups at a charge of $6.80 per copy, pursuant to the Freedom

of Information Act. The document is 68 pages in length.

Dated: December 26, 1984.

E. A. Hassebrock,

Acting Regional Director, Southwest Region.

[FR Doc. 85-139 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-70-M

George Rogers Clark National Historical Park; Notice of Revised Boundary Map

The boundary of the George Rogers Clark National Historical Park authorized July 23, 1966, 80 Stat. 325, 16 U.S.C. 291, is revised to include a small parcel of land (approximately 0.02 acre) being donated by Eastern National Park and Monument Association and a small parcel comprising the Indiana approach to the Lincoln Memorial Bridge and a portion of the Wabash River floodwall (aggregating approximately 1.17 acres). The bridge approach and floodwall area is part of the original Clark Memorial development. This boundary change is made pursuant to the authority contained in the act of June 10, 1977, 91 Stat. 211, as amended, 16 U.S.C. 460, 1-9(c). The parcels are included on map number 440/80,013 dated June 25, 1984.

Copies of the revised map are on file and available for inspection at the following addresses:

The Director, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240

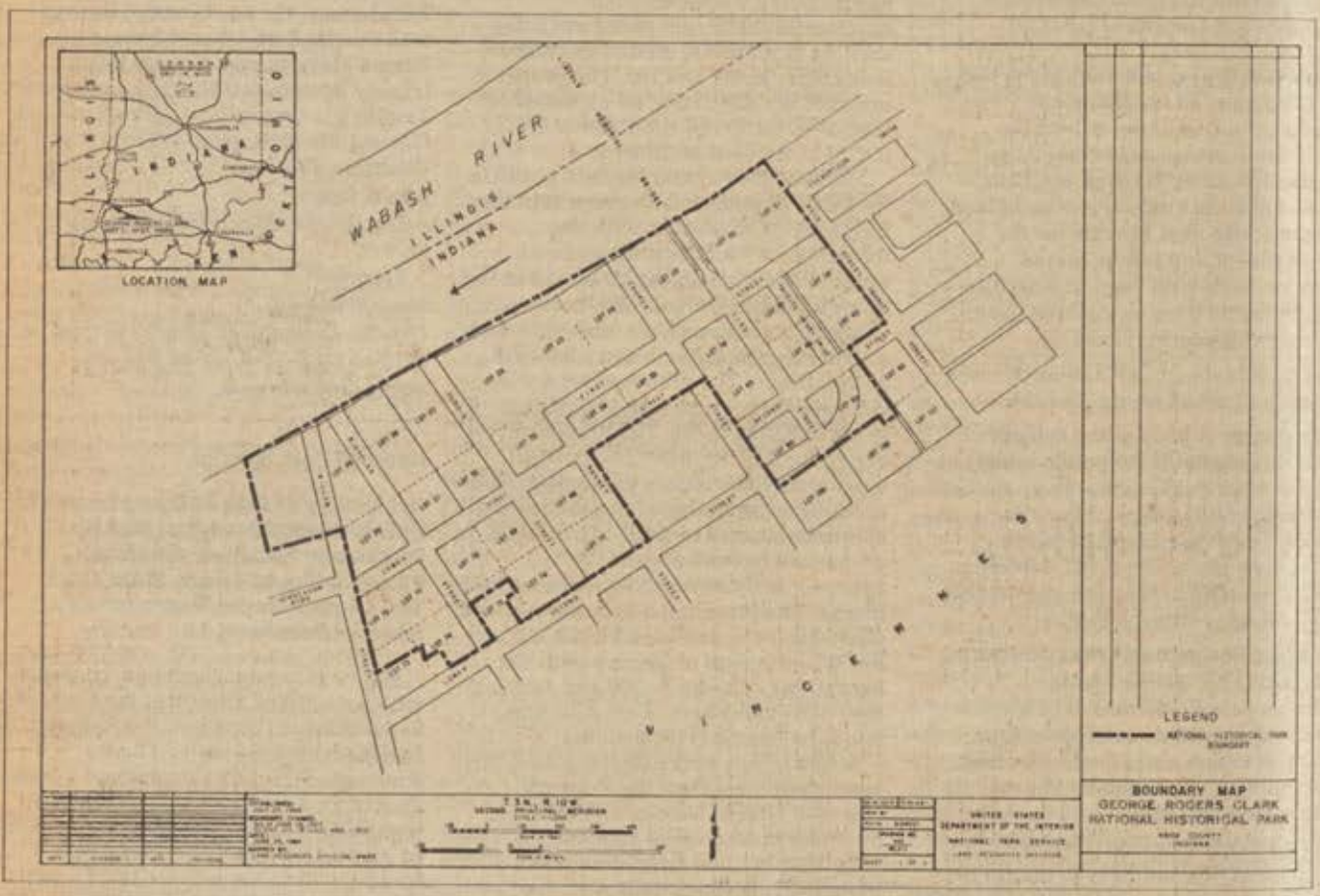
Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102

Superintendent, George Rogers Clark, National Historical Park, 401 South Second Street, Vincennes, Indiana 47591

Dated: July 13, 1984.

James L. Ryan,

Acting Regional Director, Midwest Region.



[FR. Doc. 85-138 Filed 1-2-85; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Monongahela National Forest, WV

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

ACTION: Request for comments.

SUMMARY: The Elkins-Kelly Lands Company (E-K Lands) is seeking a determination that surface coal mining operations on its holdings in the Monongahela National Forest, West Virginia, are not prohibited or limited by Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Specifically, E-K Lands has requested the Director of OSM to determine that it has "valid existing rights" (VER) under Section 522(e), or that mining its holdings in the Monongahela National Forest would be compatible with the values cited in Section 522(e)(2) of SMCRA. By this announcement, OSM is providing public notice of E-K Lands' requests and soliciting public comment thereon.

DATES: Written comments may be submitted until 4:30 p.m. on February 4, 1985.

ADDRESSES: Written comments should be mailed or hand delivered to: Administrative Record, Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone (202) 343-5866.

FOR FURTHER INFORMATION CONTACT: Dyrel Delaney, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-5866.

SUPPLEMENTARY INFORMATION: Section 522(e)(2) of SMCRA prohibits, subject to "valid existing rights" (VER), "surface coal mining operations" on "any Federal lands within the boundaries of any national forest." The term "valid existing rights" is defined in 30 CFR 761.5 (48 FR 41349; September 14, 1983).

E-K Lands has requested that OSM make a determination that it possesses VER for its mineral holdings underlying Federal lands in the Monongahela National Forest in West Virginia, and, therfore, that E-K Lands is not prohibited or limited by Section 522(e). E-K Lands has supplied OSM with information relevant to the company's VER request. That submission and all other data and information comprising the administrative record on the company's request are available for public inspection and copying during normal business hours at the address shown above.

Section 522(e)(2) provides in pertinent part that surface coal mining operations may be permitted on Federal lands within the boundaries of any national forest if the Secretary finds that "there are no significant recreational, timber, economic or other values which may be incompatible" with such operations. The Secretary also must find that the "surface operations and impacts are incident to an underground coal mine." Accordingly, the company has also requested that OSM determine whether mining of these mineral holdings would be compatible with the values cited in section 522(e)(2) of the Act. The area in which E-K Lands' holdings are located has been studied extensively in recent years. These studies have examined both the environmental values of the area generally and the potential impacts of mining in particular. Therefore, OSM intends to base its analysis on at least the following studies, as well as such other data and information as the public may suggest or submit to the administrative record:

Yurich, Steve *et al. Final Environmental Impact Statement and Sub-Unit Plan, Upper Shavers Fork Sub-Unit, Monongahela National Forest* (U.S. Department of Agriculture, U.S. Forest Service, Eastern Region; July 1, 1980).

Boggs, Patrick B. *et al. Shavers Fork Petition Evaluation Document, Final 522 SMCRA Evaluation PE-3* (U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement; April 1981).

Hanson, Larry, *et al. Compatibility of Coal Mining on the Elkins-Kelly Tract, Upper Shavers Fork Drainage, Monongahela National Forest, Randolph County, West Virginia* (U.S. Department of Agriculture, U.S. Forest Service; November 8, 1984).

Santee and Turley. *Report on Mineral ownership within 60,000 acres in Randolph and Tucker County, West Virginia, being designated as the Upper and Lower Shavers Fork in Monongahela National Forest* (correspondence to Mr. Marion Ferrgai OSM July 27, 1980).

Office of Surface Mining Reclamation and Enforcement. *Mower Lumber Company, Determination of Valid Existing Rights for Underground Coal Mining, Upper Shavers Fork Sub-unit, Monongahela National Forest, West Virginia* (U.S. Department of the Interior, 45 FR 61798; September 17, 1980).

OSM invites public comment or information which may be relevant to the evaluation of E-K Lands' requests. among the issues on which OSM seeks comment are: the feasibility of mining any of the coal at issue by underground mining techniques; the accessibility of any of the coal at issue by means other than over Forest Service lands; the availability of any marketable minerals other than coal (such as oil and gas) on E-K Lands' property and the approximate location and quantities of any such materials; all available information on coaling mining operations on E-K Lands' mineral estate since 1937 (including the dates of any such operations and the mining techniques); and, the status of the legal title to the surface estate and to the mineral estate.

The comment period will remain open until 4:30 p.m. on February 4, 1985. Following the close of the comment period, OSM will publish a final determination which will take into account all comments and information in the Administrative Record.

Dated: December 27, 1984.

Wesley R. Booker,

Acting Director.

[FR Doc. 85-61 Filed 1-2-85; 8:45 am]

BILLING 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-199]

Certain Anodes for Cathodic Protection and Components Thereof; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on February 4, 1985, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: December 21, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 85-127 Filed 1-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor; Prehearing Conference

Notice is hereby given that the prehearing conference in this proceeding scheduled for January 7, 1985, and the hearing scheduled to commence immediately thereafter (49 FR 48393) are cancelled.

The prehearing conference is rescheduled to commence at 9:00 a.m. on January 14, 1985, in Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: December 21, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 85-130 Filed 1-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-195]

Certain Cloisonne Jewelry; Commission Decision Not To Review Initial Determination Terminating a Respondent on the Basis of Complainant's Motion To Terminate

AGENCY: International Trade Commission.

ACTION: Termination of respondent on the basis of complainant's motion to terminate.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating respondent Humber Pacific in the above-captioned investigation. On October 23, 1984, complainant Laurel Burch, Inc. filed a motion (Motion No. 195–2) requesting the termination of respondent Humber Paific. On November 9, 1984, complainant filed a supplement to Motion 195–2 stating that the basis for the requested termination of respondent Humber Pacific was the absence of evidence that Humber Pacific has engaged in any unfair acts with regard to the products at issue in the investigation.The administrative law judge issued an ID (Order No. 6) granting the motion for termination on November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: The Commission received no petitions for review of the ID. No comments were received from Government agencies.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules §§ 210.51(a) and 210.53(c) (19 CFR 210.51 and 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–128 Filed 1–2–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Commission Decision Not To Review Initial Determinations Terminating Five Respondents on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Termination of respondents on the basis of settlement agreements.

SUMMARY: The U.S. International Trade Commission has determined not to review four initial determinations (IDs) terminating respondents J. Weck GmbH & Co., Glasshaus, Inc., Westerwald A.G., Sholton Associates, and Glass Masonry, Inc., in the above-captioned investigation. On November 1, 1984, complainant Pittsburg Corning Corporation and the above-named respondents filed joint motions (Motion Nos. 187–20–23) to terminate these parties as respondents in the above-captioned investigation based upon settlement agreements. The administrative law judge issued four IDs granting the motions for termination on November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 523–1627.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of November 23, 1984 (49 FR 46207). No petitions for review of the IDs were filed nor were any comments received from Government agencies or the public.

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–132 Filed 1–2–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Commission Decision Not To Review Initial Determination Terminating Three Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of respondents on the basis of settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating respondents Vereinigte Glasswerke GmbH, Euroglass Glasrep Corporation, and Glas und Spiegel Manufactur A.G. Schalke in the above-captioned investigation. On November 15, 1984, complainant Pittsburg Corning Corporation and the above-named respondents filed a joint motion (Motion No. 187–24) to terminate the parties as respondents in the above-captioned investigation based upon a settlement agreement. The administrative law judge issued an ID granting the motion for termination on November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of November 23, 1984 (49 FR 46207). No petitions for review of the ID were filed nor were any comments received from Government agencies or the public.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–131 Filed 1–2–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Motion To Dismiss

AGENCY: International Trade Commission.

ACTION: Termination of respondent on the basis of a motion to dismiss.

SUMMARY: The U.S. International Trade Commission has determined not to review as initial determination (ID) terminating respondent Cleveland Glass Block Company in the above-captioned investigation. On October 24, 1984, complainant Pittsburg Corning Corporation filed a motion (Motion No. 187-19) to dismiss respondent Cleveland Glass Block Company. On November 16, 1984, the Administrative Law Judge issued an ID (Order No. 20) terminating the investigation as to respondent Cleveland Glass Block Co. with prejudice.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 523-1627.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53). No petitions for review of the ID were filed nor were any comments received from Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-125 Filed 1-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Commission Decision Not to Review Initial Determinations Terminating Two Respondents on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Termination of two respondents on the basis of setlement agreements.

SUMMARY: The U.S. International Trade Commission has determined not to review two initial determinations (IDs) terminating respondents Lotus International Corporation and Fu Luong Traffic Parts Co. in the above-captioned investigation. On October 22, 1984, complainant Precor Incorporated filed a motion requesting the termination of respondent Lotus International Corporation (Motion No. 193-17) on the basis of a settlement agreement. On October 25, 1984, complainant Precor filed a motion requesting the termination of respondent Fu Luong Traffic Parts Co. (Motion No. 193-18) on the basis of a settlement agreement. The administrative law judge on November 27, 1984, issued two IDs (Order Nos. 13 and 14) granting the motions for termination.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

SUPPLEMENTARY INFORMATION: The Commission received no petitions for review of the IDs. No comments were received from Government agencies or from the public.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.51 (19 CFR 210.51). Notice of both IDs was published in the **Federal Register** of December 3, 1984 (49 FR 47340).

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-126 Filed 1-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Commission Decision Not To Review Initial Determinations Terminating Two Respondents on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Termination of two respondents on the basis of settlement agreements.

SUMMARY: The U.S. International Trade Commission has determined not to review two initial determinations (IDs) terminating respondents MDI Sanyco Automotive U.S.A., Inc. and M.T.I. Corporation in the above-captioned investigation. On October 15, 1984, complainant Precor Incorporated filed two motions (Motions Nos. 193-14 and 193-15) requesting the termination of respondent MDI Sanyco Automotive U.S.A., Inc. and respondent M.T.I. Corporation on the basis of a settlement agreement. The administrative law judge issued two IDs (Orders Nos. 11 and 12) granting the motion for termination on November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

SUPPLEMENTARY INFORMATION: The Commission received a petition for review of one ID (Order No. 11) from the Commission investigative attorney but determined that review was not warranted. No comments were received from Government agencies or from the public.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.51 (19 CFR 210.51). Notice of both IDs was published in the **Federal Register** of November 30, 1984 (49 FR 47121).

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: December 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-129 Filed 1-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 751-TA-10]

Frozen Concentrated Orange Juice From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Commission determines,[2] pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), that an industry in the United States would be threatened with material injury by reason of imports of frozen concentrated orange juice (FCOJ) from Brazil if the suspension agreement regarding such merchandise were to be modified or revoked.

Background

On July 11, 1983, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of FCOJ which had been found by the Department of Commerce to be subsidized by the Government of Brazil (48 FR 34150, July 27, 1983).[3] As a result of this determination the suspension agreement signed by Commerce and the Government of Brazil on February 24, 1983,[4] under which Brazil agreed to offset completely the amount of the net subsidy determined by Commerce to exist with respect to FCOJ, remained in effect.

On May 31, 1984, the Commission received a request, filed pursuant to section 751(b) of the Tariff Act of 1930, to review its affirmative injury determination in light of changed circumstances. The request was filed on behalf of three Brazilian producers and exporters of FCOJ,[5] who alleged that the major freeze in Florida in December 1983 and the subsequent decline in the 1983/84 Florida crop, as well as the surge in demand for Brazilian juice in light of lower-than-projected Brazilian production in 1983/84, are sufficient factors to warrant a review.[6]

The Commission requested comments from the public regarding the proposed institution of a review investigation in a notice published in the **Federal Register** on June 20, 1984 (49 FR 25319). The only comments received were those from Florida Citrus Mutual (Mutual), the original petitioner, in opposition to the request.

Mutual argued that the changed circumstances alleged by the Brazilian firms were insufficient to warrant a review, contending that the long-term trend in production and exportation of FCOJ from Brazil is unaffected by any temporary fluctuations in Brazilian supplies, and that the December 1983 Florida freeze created a "near-term" shortage which does not amount to a "changed circumstance" within the meaning of section 751.[7]

On the basis of the request for review and the comments filed concerning the request, the Commission instituted investigation No. 751–TA–10 on August 21, 1984.[8] Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 29, 1984 (49 FR 34312). The hearing was held in Washington, DC, on November 5, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on December 21, 1984. A public version of the Commission's report, Frozen Concentrated Orange Juice from Brazil (investigation No. 751–TA–10, USITC Publication 1623, December 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: December 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–124 Filed 1–2–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30577]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Soo Line Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343 an acquisition of trackage rights permitting Burlington Northern Railroad Company to operate over 36.48 miles of line of the Soo Line Railroad Company between Erskine and Thief River Falls, MN, subject to standard employee protective conditions.

DATES: This exemption is effective on February 1, 1985. Petitions to stay must be filed by January 14, 1985. Petitions for reconsiderations must be filed by January 22, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30577 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representative: Douglas J. Babb, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–78 Filed 01–02–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–18; Sub-65X]

The Chesapeake and Ohio Railway Co. Abandonment in Seneca County, OH; Corrected Notice of Exemption*

The Chesapeake and Ohio Railway Company (C&O) filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. C&O's abandonment involves two portions of its line of railroad at or near Fostoria, OH, between Stations 1784+05 and 1798+14, a distance of approximately 0.27 miles and between Stations 1876+67 and 1895+65, a distance of approximately 0.36 miles, all in Seneca County, OH.

C&O has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on

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[2] Chairwoman Stern and Vice Chairman Liebeler dissenting.

[3] *Frozen Concentrated Orange Juice from Brazil: Determination of the Commission in Investigation No. 701–TA–184 (Final) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation*, USITC Publication 1406, July 1983.

[4] 48 FR 8839, March 2, 1983.

[5] These producers and exporters are Succocitrico Cutrale, SA; Citrosuco Paulista, SA; and Cargill Industries, Ltda.

[6] "Petition for a Changed Circumstances Review Under Section 751(b) of the Tariff Act of 1930 of the Commission's Final Affirmative Threat Determination in Investigation No. 701–TA–184 (Frozen Concentrated Orange Juice From Brazil)," May 31, 1984.

[7] "Statement of Florida Citrus Mutual in Opposition to the Initiation of a "Changed Circumstances Review," July 20, 1984.

[8] Commissioners Eckes and Lodwick dissenting.

* The Notice of Exemption served November 20, 1984 [49 FR 45817, November 20, 1984] incorrectly described valuation station 1798+14 as 179+14.

behalf of such user, regarding cessation of service over the line, either is pending with the Commission or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 366 I.C.C. 91 (1979).

The exemption will be effective on December 20, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 29, 1984, petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by Decembr 10, 1984, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20403.

A copy of any petition filed with the Commission must be sent to C&O's representatives:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

or

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101.

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

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-80 Filed 1-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30594]

Chicago and North Western Transportation Co.; Exemption From 49 U.S.C. 11343; Baltimore and Ohio Chicago Terminal Railroad Co., Trackage Rights Exemption; Soo Line Railroad Co., Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 the acquisition by Chicago and North Western Transportation Company of approximately three miles of track and land and yard tracks owned by Baltimore and Ohio Chicago Terminal Railroad Company (BOCT), in Chicago, IL, and from 49 U.S.C. 11343 the acquisition by BOCT and Soo Line Railroad Company of trackage rights over the line, subject to labor protection.

DATES: This decision is effective on December 28, 1984. Petitions to reopen must be filed by January 23, 1985.

ADDRESSES: Sent petitions referring to Finance Docket No. 30594 to:

(1) Office of the Secretary, Case Control Branch, Interstate commerce Commission, Washington, DC 20423.

(2) Petitioner's Representatives:

Ann E. Keating, 1 North Western Center, Chicago, IL 60606

Peter J. Shuditz, P.O. Box 6419, Cleveland, OH 44101

Fern B. Albers, Soo Line Building, P.O. Box 530, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800 424-5403).

Decided: December 26, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioner Gradison concurred with a separate expression. Commissioner Sterrett dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-77 Filed 1-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30573]

Chicago Short Line Railway Co.; Exemption; Acquisition and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10901 the acquisition and operation by Chicago Short Line Railway Company (CSL) of certain trackage formerly owned by the Chicago, Rock Island, and Pacific Railroad Company (CRIP) in the Chicago Switching District.

DATES: This exemption is effective on February 4, 1985. Petitions for reconsideration must be filed by January 23, 1985. Petitions for stay must be filed by January 14, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30573 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: D. Kevin Blair, 55 West Monroe Street, Suite 1500, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 23, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-76 Filed 1-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30587]

Delaware Otsego Corp.; Securities Exemption;

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 and 11348 the issuance of 13,951 shares of stock, par value $1.25 per share.

DATES: This exemption is effective on January 3, 1985. Petitions for reopening must be filed by January 23, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30587 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lester A. Sittler, Delaware Otsego Corporation, One Railroad Avenue, Cooperstown, NW 13326.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–79 Filed 1–2–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30439]

Gulf & Mississippi Railroad Corp. Purchase (Portion); Exemption; Illinois Central Gulf Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the purchase by Gulf & Mississippi Railroad Corporation of 713 miles of track known as the East Mississippi Lines from Illinois Central Gulf Railroad Corporation from the requirements of 49 U.S.C. 10901.

DATES: This exemption is effective on February 4, 1985. Petitions for reconsideration must be filed by January 23, 1985. Petitions for stay must be filed by January 14, 1985.

ADDRESSES: Send pleading referring to Finance Docket No. 30439 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Betty Jo Christian, Steptoe & Johnson Chartered, 1250 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85–75 Filed 1–2–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review by OMB

December 28, 1984.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available);

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

New Collection

(1) Larry E. Miesse, 202/633–4312

(2) Bureau of Justice Assistance, Department of Justice

(3) Crimianl Justice Block Grants

(4) None

(5) Annually

(6) State and local governments. Information will be collected to comply with the requirements of the Justice Assistance Act that states and local recipients of block grant funds submit performance reports. Information will be used by the Bureau of Justice Assistance as part of its report to the President and the Congress as also required by the Act.

(7) 600 respondents

(8) 600 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder—395–4814

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(1) Larry E. Miesse, 202/633–4313

(2) Civil Rights Division, Department of Justice

(3) Procedures for the Administration of Section 5 of the Voting Rights Act of 1985, Proposed Revision of Procedures

(4) None

(5) On occasion

(6) State and local governments. Jurisdictions under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that changes are not racially discriminatory. These procesures facilitate the provision of information that will enable the Attorney General to make the required determination.

(7) 1,200 respondents

(8) 30,000 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder—395–4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 85–73 Filed 1–2–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Consent Decree in Clean Water Act Enforcement Action; Alto-Tronics Corp.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alto-Tronics Corporation*, Civil Action No. 84–4073–G (D.Mass.) has been lodged with the United States District Court for the District of Massachusetts. The consent decree requires the defendant to install pollution control equipment and comply with federal and local pretreatment requirements under the Clean Water Act, 33 U.S.C. 1317 and to pay penalties of $75,000 to the United States and $50,000 to the Commonwealth of Massachusetts for past violations. The

decree also provides for stipulated penalties for any future violations of the terms and conditions of the decree.

The consent decree may be examined at: (1) The office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109; (2) the Office of Regional Counsel, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 92203; and (3) the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515 Main Justice Building, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail at the environmental enforcement section at a cost of $1.90 per copy ($0.10 per page reproduction charge). In requesting a copy, please refer to *United States* v. *Alto-Tronics Corp.*, D.J. #90-5-1-1-2200.

The Department of Justice will receive comments concerning the decree for thirty (30) days from publication of this Notice. Comments should be addressed to the Assistant Attoreny General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should reference *United States* v. *Alto-Tronics Corp.*, D.J. #90-5-1-1-2200.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-108 Filed 1-2-85; 8:45 am]

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Antitrust Division

Proposed Consent Judgments; Alcan Aluminum Ltd., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below two comments it received from Aluminum Company of America and Reynolds Metals Company concerning a proposed consent judgment in *United States v. Alcan Aluminum Limited, et al.*, Civil No. C-84-1028-L-A, United States District Court for the Western District of Kentucky. Also published below is the response of the United States to those comments.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Note.—Attachments A and B, consisting of newspaper articles from the Wall Street Journal, were filed as a part of the original document.

U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1208-L-B]

Comments of Aluminum Company of America in Opposition to Section IV(B)6 of the Proposed Final Judgment

United States of America, Plaintiff, v. *Alcan Aluminum Limited, Alcan Aluminum Corporation, and Atlantic Richfield Company*, Defendants.

Aluminum Company of America ("Alcoa"), pursuant to the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b-h)), respectfully submits these written comments in opposition to Section IV(B)6 of the proposed Final Judgment ("Judgment" or "Decree"). The Judgment purports to allow the defendants Alcan Aluminum Limited and Alcan Aluminum Corporation ("Alcan") to acquire only up to a 40 percent interest in the Logan County, Kentucky, rolling mill ("Logan County plant" or "Logan County") now owned by the defendant Atlantic Richfield Company ("Arco"); however, Section IV(B)6 permits Alcan to avoid the 40 percent limitation by providing that "[e]ach party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable cost, but not the fixd cost, attributable to the added production."

Alco is greatly concerned about that provision for three principal reasons: *first*, it is inconsistent with the remainder of the Judgment and, if adopted, would frustrate the remedial goals the Department is seeking to achieve; *second*, it serves no necessary or useful procompetitive or economic purpose; and, *third*, it would permit Alcan to benefit from its attempted anticompetitive acquisition of the entire Logan County plant by giving it access to unused capacity on a reduced cost basis. For these reasons, Section IV(B)6 is contrary to the public interest and should be deleted from the Judgment.

Discussion

It is clear from the Complaint and Competitive Impact Statement (CIS) that the Department has determined that Alcan's acquisition of Arco's Logan County plant would substantially lessen competition in the aluminum can stock market, in violation of Section 7 of the Clayton Act (15 U.S.C. § 18). As stated in the Competitive Impact Statement, the "market for aluminum can body stock is highly concentrated," with a Herfindahl-Hirshman Index ("HHI") of "approximately 2,300 in 1983" (CIS at 6); the "Logan County plant was specifically designed to produce can stock" and has capacity to produce can body stock equal to "14.4 percent of total 1983 shipments" (*id.*); and "[b]arriers to entry into the manufacture of can body stock are high" (*id.* at 7). Because "Arco represents a significant new entrant, with a state-of-the-art rolling mill, into a highly concentrated industry" and because of high entry barriers, the lack of effective substitutes, and other factors, the Department concluded that Alcan's acquisition of Arco's entire Logan County plant would be unlawful (*id.*; Complaint ¶¶ 18-25).

The Department has undertaken to mitigate the perceived anticompetitive effects by framing a decree that would allow Alcan access to only 40 percent of the Logan County capacity. The stated objective of the Decree is to require that Arco retain sufficient capacity at Logan County so that it (or its successor) would be preserved "as a significant independent entrant into the buisness of manufacturing aluminum can body stock" (CIS at 8).

A. Section IV(B)6 Could Thwart the Decree's Key Objective of Restricting Alcan to 40 Percent of Logan County Capacity, and, Therefore, May Permit the Substantial Anticompetitive Effects Identified in the Complaint and Competitive Impact Statement.

The Competitive Impact Statement makes clear that in order to "carry out [the Decree's] objective of preserving Arco, or the successor to its interest in the Logan County plant, as a significant factor in the aluminum can body stock market" (CIS at 9), Alcan's ownership in Logan County will be limited to 40 percent and it will be allowed to use only 40 percent of Logan County's capacity. As spelled out in the Competitive Impact Statement,

> Alcan is prohibited from acquiring more than a 40 percent ownership interest in the Logan County plant, except to the extent it funds more than 40 percent of a future capital improvement in which Arco or its successor declines to participate fully. *The decree gives each party to the joint venture the right to use the capacity of the Logan County plant in proportion to its ownership interest.*

(*Id.*, emphasis added) Section IV(B)6 of the Judgment is contrary to, and would thwart, this key objective of restricting Alcan to only 40 percent of the present Logan County capacity, for it permits Alcan to utilize unused capacity, without any limitation, without financing any future capital improvement, and, indeed, without even bearing a share of the fixed cost of the unused capacity. As a result, if there is unused capacity at Logan County, Alcan will be free to use far more than the 40 percent prescribed by the Decree.

The magnitude of the incremental anticompetitive effect permitted by Section IV(B)6 is demonstrated by an HHI analysis. Assuming an Alcan market share of 13.5 percent and an Arco share of 14.4 percent (*see* CIS at 6), the proposed acquisition would result in a 389 point increase in the HHI $[(13.5+14.4)^2-(13.5^2+14.4^2)]$. This great—and clearly anticompetitive—increase in the HHI is significantly mitigated by giving Alcan access to only 40 percent of the Logan County capaicty. On that basis, its share of the Logan County capacity, if devoted to body stock, would amount to only 5.76 percent of body stock shipments $(.40\times14.4)$, and the resulting increase in the HHI is reduced to 57 points $[(13.5+5.76)^2+(8.64)^2-(13.5^2+14.4^2)]$. While this is still a significant increase in a highly concentrated market, it may be permissible for the reasons, and subject to the conditions, discussed in the Competitive Impact Statement at pages 8 to 14. On the other hand, the increase in the HHI becomes progressively greater as Alcan is given access to more than 40 percent of the Logan County capacity. For example, if Arco were to use only 50 percent of its 60 percent share of Logan County capacity, Alcan would then be able to use 70 percent of Logan County capacity for its body stock production. Using the same assumptions as before, this would translate into an increase in the HHI of approximately 186 points $[(13.5+10.08)^2+(4.32)^2-(13.5^2+14.4^2)]$.

While, to some extent, this HHI analysis necessarily rests on estimates, our estimates must closely approximate those made by the Department in determining that it would be unacceptable for Alcan to get access to more than 40 percent of the present Logan County capacity. By allowing Alcan to avoid that 40 percent limitation, Section IV(B)6 could thwart the basic remedial objective of the Decree.

B. Section IV(B)6 Serves No Necessary or Useful Procompetitive or Economic Function.

The potential anticompetitive effect of Section IV(B)6 is not countervailed by any true competitive or economic benefit. Its lack of redeeming virtue can be demonstrated by considering its effect if (i) there is no unused capacity, or (ii) Arco elects not to use all of its Logan County capacity share.

(i) *Unused capacity does not arise.* The Competitive Impact Statement states that the "decree provides an incentive for each party to utilize its capacity fully, rather than to acquiesce in the other party's use of that capacity, by requiring each party to pay for its share of the fixed cost of operating the plant irrespective of its actual utilization." (CIS at 12) Because of this provision, and the huge investment in the plant, it further states that "both Alcan and Arco will have a strong incentive to make full use of their respective utilization rights." (*Id.*) If this proves to be true, then Section IV(B)6 would be inoperative and redundant.

(ii) *Arco fails to use its full capacity share.* The possibility that Arco will elect not to use its full capacity share cannot be dismissed. Arco has made clear that the results of its metals unit have been "unsatisfactory" and that it is prepared to take a one-time net book loss of from $200 million to $300 million on the sale of its aluminum assets to Alcan. Attachment A. It has even gone so far as to advertise publicly that its experienced employees are available "for immediate consideration and placement" with other companies. Attachment B. In these circumstances, it is a dubious assumption that Arco will necessarily use its full capacity share in order to avoid the fixed cost penalty provided by the Judgment.

The only arguable benefit of Section IV(B)6 is that, if Arco does not use its full share, it may avoid having some Logan County capacity remain unused for some period of time; however, it is highly questionable that any true economic benefit would result. First of all, it is important to recognize that Arco, as the sole owner of Logan County, would have had the same incentive to make full use of the new plant's capacity. Had it chosen not to do so, however, the unused capacity would have remained idle; it would not have been diverted to use by a major body stock competitor. It is only by virtue of its attempted anticompetitive acquisition that Alcan has the opportunity, pursuant to Section IV(B)6, to use Arco's unused capacity and thereby expand its production beyond the 40 percent mandated by the Decree. Moreover, to the extent Alcan did take advantage of Section IV(B)6, it would not be responding to normal market and economic incentives. Rather, it would be the beneficiary of the extraordinary subsidy provided by Section IV(B)6. Finally, there can be no assurance that any net increase in capacity utilization would result. Alcan could simply curtail production at its older and less efficient Oswego, New York, mill and, without any fixed cost penalty, shift the same production to the modern and more efficient Logan County facility.

C. Section IV(B)6 Creates the Anomalous Possibility That Alcan Will Not Only Obtain Access to More Than 40 Percent of Logan County But Will Obtain a Significant Cost Advantage Over Alcoa and Other Aluminum Body Stock Producers.

The result of Section IV(B)6 is that Alcan may not only be allowed to use an unlimited amount of the Logan County plant capacity beyond the 40 percent specified in the decree but would be allowed to acquire such additional capacity without bearing the burden of the fixed costs. This is not the result of any capital investment, innovation, or true efficiency gain but of the unique windfall permitted by Section IV(B)6. The irony of this result is twofold: It places Alcan in a more favorable cost position than competitors that have not tried to make acquisitions of competing mills; and it places Alcan in a better cost position than if it had been permitted to acquire ownership of 100 percent of the Logan County plant, since it would then have been obliged to bear all costs of production, both fixed and variable.

Conclusion

Section IV(B)6 of the Judgment could result in Alcan's having access to more than 40 percent of Logan County's body stock capacity, contrary to the clear intent of the Judgment. The only countervailing benefit is that it may avoid there being some unused capacity at the Logan County plant; however, it is not the purpose of Section 7 of the Clayton Act to insure against the existence of unused capacity. The purpose of that statute, and of equitable relief entered pursuant thereto, is to prevent acquisitions having substantial anticompetitive effects.

The only way to avoid the potential adverse and unnatural effects of Section IV(B)6 would be to delete it. The Decree would then contain an unequivocal prohibition against Alcan's utilization of more than 40 percent of the present Logan County capacity.

Dated: December 5, 1984.

Respectfully submitted.

Bergson, Borkland, Margolis & Adler.

Howard Adler, Jr.

Barry R. Goldsmith,

11 Dupont Circle, NW., Washington, D.C. 20036, (202) 462-5930.

U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1208-L-B]

Comments of Reynolds Metals Company on the Proposed Final Judgment

United States of America, Plaintiff, v. *Alcan Aluminum Limited, Alcan Aluminum*

Corporation, and Atlantic Richfield Company, Defendants.

Reynolds Metals Company ("Reynolds") endorses the approach of the Proposed Final Judgment (the "Consent Decree") which seeks to limit Alcan to a 40% interest in Arco's new can stock facility in Logan County and to require Arco (or its successor) to retain a 60% interest in the plant. Nevertheless Reynolds believes that, as presently drafted, the Consent Decree provides a loophole which improperly permits Alcan to exceed the 40% limitation on its interest in the Logan County mill. Reynolds also submits that the prophylactic provisions of the Consent Decree which regulate the extent of communications between Alcan and Arco need to be tightened to insure that both companies remain arm's-length competitors. Consequently Reynolds herewith submits a brief comment on these issues as provided by the Antitrust Procedures and Penalty Act, 15 U.S.C. § 16. Reynolds respectfully requests the parties to the Consent Decree to agree to the modifications proposed below and asks the Court to condition its approval of the Consent Decree upon acceptance of those modifications.

1. The Fundamental Illegality of the Acquisition by Alcan of a 100% Interest in Arco's Logan County Plant.

Aluminum can body stock is a sheet product used to make the bodies of beverage cans. Body stock has unique physical characteristics, means of production and pricing, and therefore constitutes a separate product market under Section 7 of the Clayton Act (15 U.S.C. § 18), as amended. Complaint ¶¶ 8–15. The body stock market of the United States is highly concentrated; there are only seven producers and the four largest producers have aggregate 1983 market shares of 87.9%. Alcan, the largest Western producer of aluminum products, is the fourth largest producer of body stock in the U.S. with a 1983 market share of 13.5%. Complaint ¶¶ 6, 16–19.

The antitrust violation arises out of Alcan's original agreement to purchase the major part of Arco's aluminum business including Arco's newly constructed rolling mill in Logan County. The Logan County mill, considered to be the "crown jewel" of Arco's aluminum assets, was designed specifically to produce body stock and to permit Arco to enter the body stock market. Once on-stream and qualified with its customers, the plant will have the capacity to produce 315 million pounds of body stock which would equal 14.4% of total 1983 shipments. Complaint ¶¶ 20–21; Competitive Impact Statement, 49 FR 40491, 40492 (October 16, 1984).

Although technically a "potential competition" case—inasmuch as the Logan County plant is presently in a break-in phase—it is readily apparent that the acquisition by Alcan of full ownership of the plant would involve the sure and certain elimination of competition on a massive scale. Under the Antitrust Division's Merger Guidelines a market with a Herfindahl index ("HHI") over 1800 is "highly concentrated" and subject to stringent antitrust scrutiny; at present, the HHI for the body stock market is approximately 2300. If Alcan were to acquire and market the Logan County plant output of body stock, the increase in the HHI would exceed 300 points; under the Merger Guidelines an increase of only 50 points in a highly concentrated market is presumptively unlawful. The clear illegality of an acquisition of this magnitude underlines the Complaint herein as well as the Antitrust Division's novel attempt to "solve" the problem through the creation of a 60–40 joint venture between two presumed competitors for the operation of the Logan County plant.

2. One Preliminary Problem: An Inadequate Record.

An initial difficulty in analyzing the effectiveness of the proposed joint venture is the unavailability of the basic acquisition agreement and related agreements between Alcan and Arco. The Joint Venture Agreement itself (Exhibit 1 to the Consent Decree) provides in Section 3.6(c) that Alcan and Arco are obligated.

> [t]o cause the Management Company [which will operate the plant] to carry out its obligations and the obligations of the Joint Venture *under the Revised Acquisition Agreement* dated as of October 1, 1984 by and between Alcan Aluminum Limited and Atlantic Richfield Company *and all agreements ancillary thereto*. [emphasis added]

Yet neither the Revised Acquisition Agreement nor any "ancillary" agreements have been disclosed [1] and the Court is being asked to approve (and the public to comment upon) a complex consent decree based on an obviously incomplete record. A review of these documents may be quite important in assessing Arco's economic incentive (or lack of same) to make use of its 60% interest or to relinquish its rights to Alcan and thereby undermine the effectiveness of the decree. Accordingly Reynolds respectfully requests that the public and the Court be permitted to review the acquisition agreement and ancillary agreements prior to any decision on whether to approve, conditionally approve or disapprove the proposed final judgment.[2]

3. The Court Should Condition Its Approval on Closing the Loophole in Section IV(B)(6) of the Consent Decree.

The Justice Department's Complaint is based on the conclusion, well-founded that Alcan's acquisiton of a 100% interest in Arco's Logan County Plan would be illegal. On the other hand, the Consent Decree is based on the assumption that the antitrust problem can be solved by limiting Alcan to a 40% interest in the plant and concommitantly maintaining Arco (or its successor) as a new entrant and viable competitor in the body stock market. If that is so, it must necessarily follow that no 60–40 joint venture is legal unless there is a factual basis on which to conclude that *in practice* the 40% owner will use *only* about 40% of the capacity of the plant—not 70% or 100%.

However, Section IV(B)(6) of the Consent Decree provides,

> Each party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable costs, but not the fixed costs, attributable to the added production.

It may be argued that it is highly unlikely that Arco will relinquish its capacity to Alcan in light of its continuing obligation ot pay fixed costs.[3] But if that is the case then surely the escape clause is unnecessary. And if Arco's incentive to use its capacity is in fact not sufficient, then this provision will have an extraordinarily perverse result: Alcan will acquire increased capacity and market share which the Antitrust Division Law already determined to be anticompetitive, and will do so on a *subsidized* basis by virtue of Arco's obligation under the Consent Decree to pay fixed costs. Consequently, Reynolds submits that Alcan's share of the joint venture should

[1] It is perhaps of some significance that an authoritative industry source, *Metals Week*, reported on October 15, 1984 that "no word" is expected from Alcan on how much it will be paying for its acquisitions from Arco under the new Consent Decree arrangements "at least until the public comment period [under the Antitrust Procedures and Penalty Act] is over."

[2] This will not impose any burden on the parties nor will it require the disclosure of confidential information. Indeed where an acquisition is effected by a purchase of securities instead of assets, or where an asset acquisition requires shareholder approval, the acquisition or merger agreement is routinely disclosed in public billings with the Securities and Exchange Commission.

[3] Whether this is true may depend on the undisclosed terms of the Revised Acquisition Agreement and tax and accounting considerations relating thereto.

be capped at 40% thereby closing the existing loophole. This will work no injustice to Alcan, which will get just what it bargained for. Nor will it work an injustice to Arco which remains free to sell its 60% share to third parties (present company excluded) if it is unwilling to continue its aluminum operations.

4. The Language of Section V of the Consent Decree Should Be Tightened to Insure that Competition Between Arco and Alcan is Preserved

Any joint venture between two competitors contains the risk that competition between them will be lessened and that the improper communication of market information will take place. The Antitrust Division is clearly aware of this risk and has properly attempted to draft a Consent Decree which will preserve a competitive relationship by limiting the nature and extent of communications between the parties.

However, Reynolds is concerned by the perhaps unintentional inconsistency between the Justice Department's Competitive Impact Statement on that subject on the one hand, and the actual language of the Consent Decree, on the other hand. Thus the Competitive Impact Statement states broadly that:

> Alcan and Arco are forbidden from agreeing or communicating with each other, directly or indirectly, or through the management company, *with regard to competitively sensitive matters, including* the parties' future production schedules for specific products, present or future terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, and sales or proposed sales to specific customers. Exceptions are provided for bona fide sales transactions between Alcan and Arco and for information that is generally announced or generally published.

49 FR at 40,493 (emphasis added).

The clear purport is that (with the exceptions noted in the last sentence of the quotation) there is a general prohibition on competitively sensitive communications—as indeed there ought to be under the doctrine of *United States* v. *Container Corp. of America*, 393, U.S. 333 (1969).

In fact, however, the Consent Decree actually provides a more limited prohibition in Section V(A):

> Alcan and Arco shall not agree or communicate with each other, directly or indirectly, regarding each other's future production schedules for specific rolled aluminum products, present or future prices or other terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, or sales or proposed sales to specific customers of aluminum products; provided, however, that nothing in this provision shall prevent Alcan and Arco from communicating with each other concerning bona fide purchase and sale transactions between them or from communicating information that is or has been generally announced or generally published.

This provision, though obviously proper in its aim, is deficient in the following respects:

(1) It contains no *general* prohibition on competitively sensitive communications, and accordingly it should be amended—in conformity with the Competitive Impact Statement, above—to read, "Alcan and Arco shall not agree or communicate with each other, directly or indirectly, *regarding competitively sensitive matters*, including *without limitation*. . . ."

(2) The current language implies that the parties may freely communicate about *current and past* production schedules, although not about future schedules. Information on current and immediate past production schedules may provide valuable and sensitive information to a competitor. Therefore Section V should be amended to provide that no confidential information on production scheduling within the past six months may be exchanged.

(3) The provisions of Section V(A) *supra* on pricing information are even worse, in that they imply that exchange of past information on prices or other terms and conditions of sale is permitted. In fact, the exchange of information on recent past prices has frequently been the basis for a charge of conspiracy to violate Section 1 of the Sherman Act; *Container Corp., supra*, is of course the classic example. Thus Section V(A) *supra* should be amended to make it clear that Alcan and Arco may not agree or communicate at all on the subject of prices or other terms or conditions of sale.

Conclusion

For the reasons stated above, Reynolds respectfully submits that the Court's approval of the Consent Decree be conditioned upon the parties' agreement to the modifications proposed by Reynolds to Section IV and V of the Decree as follows:

1. Section IV(B)(6) of the Consent Decree should be deleted, thereby capping Alcan's share of 40% of the capacity of the Logan County plant.

2. Section V(A) should be amended to read as follows:

> Alcan and Arco shall not agree or communicate with each other, directly or indirectly, regarding competitively sensitive matters, including without limitation each other's production schedules for specific rolled aluminum products (except for information relating to production more than six months prior to the communication in question), prices or other terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, or sales or proposed sales to specific customers of aluminum products; provided, however, that nothing in this provision shall prevent Alcan and Arco from communicating with each other concerning bona fide purchase and sale transactions between them or from communicating information that is or has been generally published or announced.

Reynolds also requests that the parties and the Department of Justice be required to disclose the Revised Acquisition Agreement and any agreements ancillary thereto prior to any ruling by the Court on the Decree.

Respectfully submitted,

White & Case
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U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1028-L-A]

Response of United States to Comments Relating to Proposed Final Judgment and Memorandum in Support of Entry of Final Judgment

United States of America, Plaintiff v. *Alcan Aluminum Limited, Alcan Aluminum Corporation, and Atlantic Richfield Company*, Defendants.

I. Introduction

On October 5, 1984, plaintiff filed a complaint under Section 7 of the Clayton Act, 15 U.S.C. § 18, seeking to enjoin defendant Alcan Aluminum Limited and its wholly-owned United States subsidiary Alcan Aluminum Corporation (hereinafter jointly referred to as "Alcan") from acquiring aluminum production facilities from defendant Atlantic Richfield Company (hereinafter referred to as "Arco"). The government alleged in its complaint that the acquisition of the Arco assets might substantially lessen competition in the manufacture and sale of aluminum can body stock, a sheet product used to make the bottoms and sides of beer and soft drink cans.

Simultaneously with the complaint plaintiff filed with the Court a stipulation and proposed final judgment agreed to by all parties to this litigation and the government's competitive impact statement. Because this is a civil antitrust action with the government as plaintiff, the proposed consent judgment cannot be entered until the parties have complied with the requirements of section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), and the Court has determined that entry

of the proposed judgment is in the public interest.

The steps taken by the parties to comply with the Act are set out in the accompanying Certificate of Compliance with the Antitrust Procedures and Penalties Act. The stipulation, proposed final judgment, and competitive impact statement were published in the **Federal Register** on October 16, 1984. Summaries of those documents were published in The Washington Times on October 18–19 and 22–26, 1984, and in the Louisville Courier-Journal on October 17–23, 1984. The competitive impact statement and the newspaper notices invited members of the public to comment on the proposed final judgment, in accordance with 15 U.S.C. § 16(c), (d). Alcan and Arco filed the statements required by 15 U.S.C. § 2(g) on October 12 and October 15, respectively.

The comment period prescribed by 15 U.S.C. § 16(c) expired on December 17, 1984. The government received only two comments during that period. They were submitted by the Aluminum Company of America ("Alcoa") and Reynolds Metals Company ("Reynolds"). The comments and the government's response have been submitted to the **Federal Register** for publication. The comments were previously filed with the Court.

The parties have fulfilled their duties under the Antitrust Procedures and Penalties Act. Plaintiff has carefully considered the comments submitted by Alcoa and Reynolds and concluded that they do not warrant withdrawal of its consent to entry of the decree. Thus the Court may now enter the proposed final judgment if it finds the settlement to be in the public interest. Part III of this memorandum discusses the legal standard for the Court's public interest determination and the information available to the Court in evaluating the proposed final judgment.

II. Response to Comments

Alcoa objects to only one section of the proposed judgment, IV(B)(6), which provides:

> Each party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable costs, but not the fixed costs, attributable to the added production.

Its objection is three-fold. First, Alcoa believes IV(B)(6) is inconsistent with the remainder of the judgment and could frustrate its objectives. Second, Alcoa believes the provision serves no procompetitive or economic purpose. Third, Alcoa fears that IV(B)(6) will give Alcan an undeserved windfall by permitting Alcan to use substantially more than its assigned 40 percent of the Logan County plant, at costs substantially lower than its competitors must bear.

The proposed judgment provides that Arco's Logan County rolling mill will be operated as a production joint venture between Alcan (40 percent equity interest) and Arco (60 percent equity interest). The Logan County plant, which was designed to produce can stock, was completed in October 1983. This plant marks Arco's entry into the production of can body stock, a highly concentrated business in which the top four manufacturers—Alcoa, Reynolds, Kaiser, and Alcan—accounted for 87.9 percent of all United States sales in 1983.

In negotiating the proposed judgment the government concluded that Arco's retention of a 60 percent interest in the Logan County plant would give it sufficient capacity to become a significant producer of body stock. By making it the majority owner of the facility and of the management company which will operate the facility, the government sought to preserve Arco's independence. Maintaining Arco or its successor as a significant, independent factor in the market for can body stock was the central purpose of this lawsuit and of the proposed decree.

The government was aware when the decree was being negotiated that section IV(B)(6) could affect the 60/40 split of the plant's capacity established by the decree; however, it considered section IV(B)(5)—which states that each party is to bear its full share of the plant's fixed costs—adequate protection against abuse of the option granted under IV(B)(6). Each party's share of the fixed costs is determined by its equity interest. Section IV(B)(5) specifically prohibits each party from reimbursing the other for any part of its fixed costs. In addition, a definition of fixed costs is incorporated into the proposed judgment to ensure that the parties cannot alter the cost allocation by redesignating fixed costs as variable costs. Fixed costs are defined to include a substantial share of the total costs of production.

Between its nonreimbursable fixed costs and its approximately $250 million investment in its retained portion of the plant, Arco will have a powerful financial incentive to use all of its available capacity. Even if Arco is unable to sell all the body stock it can produce, it will be free to use its capacity to produce other rolled aluminum products, and it will likely choose to do so, since these large fixed costs cannot be avoided by allowing its share of the plant to lie idle. Collusion between the parties to alter the 60/40 ratio by the use of IV(B)(6) is conceivable only if it involves payment of compensation to the party surrendering a portion of its capacity, and such an arrangement would violate the decree. Consequently, the government believes there is little risk of deliberate abuse of IV(B)(6) by the defendants.

There remains the possibility that market conditions will preclude one of the joint ventures, presumably Arco, from using its full share of the plant despite the financial penalty entailed. If this is a short term phenomenon, it can be offset by higher levels of production at other times, allowing the overall 60/40 split to be maintained on an annual basis. Some variation in orders is likely and can be handled by the plant manager's scheduling of the parties' production runs.

Section IV(B)(6) would become relevant only if the shortfall is substantial and continuous. In that event, the public interest is best served by allowing the other party to make use of the unused portion of the plant's capacity. Maximizing production at the Logan County plant encourages increased production of can stock and other rolled aluminum products, thus tending to lower prices.

In sum, the government believes that section IV(B)(6) is not likely to cause a substantial or prolonged alteration in the 60/40 ration established by the decree. Whatever use is made of that provision will almost certainly be preferable to the alternative of having a portion of the plant lie idle. In the unlikely event that section IV(B)(6) results in a major and continuing alteration in the character of the joint venture, to the point of subverting the decree's objective of preserving Arco as a significant, independent competitor, the government would be able to seek a modification of the decree from the Court. This remote possibility does not require a change in the decree as currently drafted. Whatever slight risk section IV(B)(6) entails is greatly outweighed by its likely benefits.

Reynolds objects to section IV(B)(6) on grounds similar to those stated by Alcoa. In addition, Reynolds objects to the language of section V of the decree, which prohibits the exchange of certain types of information by Alcan and Arco. Reynolds asks that a general prohibition be added to that section forbidding the exchange of "competitively sensitive communications," with the current list of forbidden subjects included only as examples. Reynolds specifically expresses concern that discussions of current and past production schedules

and past pricing information are not prohibited.

As with section IV(B)(6), the government weighed the advantages and disadvantages of section V before consenting to its inclusion in the proposed judgment. Its purpose was to limit the information exchanged between these competitors, while at the same time allowing them to exchange enough information so that the joint venture can function effectively. For example, the exchange of current and past production schedules is not prohibited because the government concluded that the smooth operation of the facility would require the parties to share such data.

The government would oppose a general ban on the exchange of "competitively sensitive information." That language is so broad that its inclusion could well make it impossible for the joint venture to operate. In addition, the vagueness of the language would make the section difficult to enforce.

Section V as presently worded adequately prevents the exchange of the types of information that would allow the parties to the joint venture to engage in price fixing. There is no need for a modification of the section's language.

Reynolds also asks that the acquisition agreement between Alcan and Arco be made public. While the government would not object to that disclosure, we do not believe it is necessary for a full and complete evaluation of the proposed judgment. To the extent that any provision of the agreement is contrary to the judgment, that provision is invalid and is superceded by the judgment. More importantly, the voluminous documents that were affixed to the proposed judgment are sufficient to disclose how the venture will operate and whether any aspect of that operation will be objectionable.

III. The Court's Public Interest Determination

Note.—Deleted from Federal Register publication.

IV. Conclusion

The comments do not raise serious doubts that the settlement is in the public interest, and the issues raised do not warrant further proceedings. Plaintiff therefore respectfully requests the Court to enter the proposed final judgment, as provided for in the stipulation signed by all parties to this lawsuit.

Dated: December 26, 1984.

Respectfully submitted,

Angela L. Hughes,

Attorney, United States Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6486.

[FR Doc. 85-185 Filed 1-2-85; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on Reactor Radiological Effects and Site Evaluation; Meeting

The ACRS Subcommittees on Reactor Radiological Effects and Site Evaluation will hold a combined meeting on January 3 and 4, 1985, in Room 1046, 1717 H Street, NW, Washington, D.C.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, January 3, 1985—8:30 a.m. until the conclusion of business

Friday, January 4, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will review (1) Proposed Amendments to 10 CFR Part 50, Section 50.47 and Appendix E: Consideration of Earthquakes in the Context of Emergency Preparedness. Item (2), Proposed Amendments to 10 CFR Parts 30, 40 and 70: Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, has been deleted from consideration at this meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will then hear presentations by and hold discussions with the NRC Staff and other invited experts on the above-named topic.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 28, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-164 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas; Proposed Issuance of Construction Permit and Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering the issuance of a construction permit and subsequently a facility operating license to the University of Texas (the applicant) in Austin, Texas. The permit would authorize the applicant to construct for educational training and research purposes a nuclear research reactor (the facility) at the University's Balcones Research Center in Austin, Texas. The license would authorize the applicant to operate the reactor at steady-state power levels not in excess of 1 Megawatt thermal, with pulsing levels not in excess of 1400 Megawatts thermal.

Prior to issuance of the construction permit, the Commission will have made the findings required by the Act and the Commission's rules and regulations.

Upon completion of the construction of the facility in Austin, Texas, in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor at the power levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by

a representative of the Commission to determine whether it has been constructed in accordance with the application and the provisions of the construction permit. The license will not be issued until the Commission makes the findings required by the Act and the Commission's rules and regulations and concludes that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public or to the environment. In addition, the applicant will be required to execute an indemnity agreement as required by section 170 of the Act and by 10 CFR Part 140 of the Commission's regulations.

By February 2, 1985 the applicant may file a request for a hearing with respect to issuance of the construction permit and the facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the permit under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to C. O. Thomas (petitioner's name and telephone number); (date petition was mailed); (University of Texas); and (publication date and page number of this **Federal Register** Notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to James L. Crowson, Esq., Office of General Counsel, 210 West 7th Street, Austin, Texas 78701, attorney for the applicant.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the construction permit and operating license dated November 9, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Dated at Bethesda, Maryland, this 21st day of December, 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 85-165 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-73]

Renewal of Facility Operating License; General Electric Co.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. R-33 for General Electric Company (the licensee) which renews the license for operation of the research reactor located in Pleasanton, California. The facility is a non-power reactor that has been operating at power levels not in excess of 100 kilowatts (thermal). The renewed Operating License No. R-33 will expire on October 31, 1997.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on November 13, 1980 at 45 FR 75031. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1069) for the renewal of Facility Operating License No. R-33 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment, dated November 9, 1984, for the renewal of Facility Operating License No. R-33 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on December 27, 1984, page 50323.

For further details with respect to this action, see (1) the application for amendment dated June 13, 1979, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 18 to Operating License R-33, (4) the Commission's related Safety Evaluation Report (NUREG-1069), and (5) Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. 20555.

Copies of NUREG-1069 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, Maryland, this 28th day of December, 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 85-163 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-01815; License No. 20-00671-02; EA 84-114]

Veterans Administration Hospital, Boston, MA; Order Modifying License

I

Veterans Administration Hospital Boston, Massachusetts, (the "licensee"), is the holder of specific byproduct Material License No. 20-00671-02 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Parts 30, 33 and 35 which authorizes the licensee to possess and use radioactive materials for medical diagnosis, therapy and research.

II

On August 31, 1984, and September 12, 1984, an NRC safety inspection of the licensee's program was conducted. During the inspection, fifteen violations of NRC requirements were identified. The violations involved: failure of the Medical Isotopes Committee to meet during the fourth quarter of 1983; failure to train individuals in linearity testing of the dose calibrator; failure to perform constancy and linearity tests; failure to adequately assay for Mo-99; failure of the Medical Isotopes Committee to evaluate hazards associated with the use of 1 curie of hydrogen-3 (H-3) and prescribe special conditions for safe use; failure to maintain license limits for H-3; failure to determine air concentrations in restricted and unrestricted areas for H-3; failure to maintain urine bioassay records for H-3; disposal by an unauthorized method and failure to verify that transfer of material for waste disposal was allowed by the recipient's license; failure to perform weekly and monthly surveys of laboratories; failure to maintain unrestricted area radiation levels below regulatory limits; failure to document an evaluation of a thyroid uptake which exceeded 40 maximum permissible concentration hours; failure to maintain records of surveys of waste sent to normal trash after decay in storage; failure to follow Department of Transportation shipping regulations for transfer of a waste shipment; failure to maintain specification 7A packaging certification; and failure to use syringe shields. The violations are described in greater detail in the Notice of Violation being issued concurrently with this Order.

Collectively, these violations represent inadequate management control of the radiation safety program and they demonstrate the need for significant corrective measures to prevent similar violations in the future. At an enforcement conference on October 25, 1984, the licensee made commitments to make such improvements. On October 26, Region I issued a Confirmatory Action Letter documenting these commitments. Because of the importance of these commitments to the improvements of the licensee's program, I have determined that these commitments should be formally required by an Order.

III

In view of the foregoing, and pursuant to Sections 81, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in § 2.204 and 10 CFR Part 30, it is hereby ordered that:

A. The licensee shall retain the services of a recognized expert in the planning and implementation of a radiation protection program, independent of its staff, with extensive experience in the management and implementation of broad scope licensed radiation safety programs, to perform an assessment of the licensee's radiation safety program.

B. The licensee shall submit a detailed plan for performing the assessment of the licensee's radiation safety program. This plan shall include criteria for determining the adequacy of program functions, methods for measuring program performance, and milestone dates for the completion of the assessment of items detailed in the plan.

The assessment shall include, but need not be limited to, a review of:

1. The licensee's organization, assigned responsibilities and authorities;

2. The licensee's program for training and retraining individuals working with NRC licensed materials in NRC regulations, in the conditions of its license, and in safe practices for using licensed material;

3. The licensee' methods of approving use of licensed materials and developing procedures for the safe use of licensed materials;

4. The licensee's program for training and qualifications of all individuals involved in managing, supervising, inspecting and auditing licensed activities;

5. The licensee's program of surveillances and audits to determine compliance by by individual users of licensed materials with NRC regulations, the conditions of its NRC license, and its internal rules for the safe use of radioactive materials; and,

6. The licensee's current status of compliance with NRC regulations and the conditions of its license.

C. Within 60 days of NRC approval of the assessment plan described in Section III. B of this Order, the plan shall be implemented and completed, and the independent expert shall provide the Hospital Director a written report which describes the weaknesses identified during the assessment and recommendations for improvement. A copy of this report shall be provided to the Regional Administrator, NRC Region I, at the same time it is transmitted to the licensee.

D. Within 30 days of the date of the assessment report, the licensee shall submit a report to the NRC Regional Administrator describing the methods of implementing the recommendations of the assessment report or providing justification for alternative corrective action if any specific recommendations are not adopted. This report shall include:

1. Action items to be performed;

2. Schedules for completion of each specific action item; and

3. A system for monitoring and tracking the status and completion of the action items.

Upon completion of all action items, a final report shall be submitted to the NRC Regional Administrator.

E. The Regional Administrator may relax or terminate any of the preceding conditions for good cause shown.

IV

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Deputy Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which a hearing may be requested or, in the event a hearing is requested, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland this 26th day of December 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

Notice of Violation

[Docket No. 30-01815; License No. 20-00671-02; EA 84-114]

Veterans Administration Hospital Boston, Massachusetts 02215

An NRC inspection of activities authorized under NRC License No. 20-00671-02 was conducted on August 31, 1984 and September 12, 1984. During the inspection, eighteen violations of NRC requirements were identified. Collectively, these violations represent inadequate management control and oversight of the radiation safety program.

In accordance with 10 CFR 2.201 and the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, FR 8583 (March 8, 1984), these particular violations are set forth below:

A. 10 CFR 20.301 requires that no licensee dispose of licensed material except by certain specified procedures.

10 CFR 30.34(c) requires that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license.

10 CFR 30.41(c) requires that, prior to transferring licensed material, each licensee verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

10 CFR 30.41(d) requires that the verification include the possession of a current copy of the transferee's specific license or a written certificate from the transferee stating that the transferee is authorized to receive the type, form, and quantity of byproduct material to be transferred. Condition 20 of License No. 20-00671-02 incorporates by reference Appendix J of the application dated July 31, 1979 which requires radioactive wastes be transferred only to a specified commerical waste disposal company.

Contrary to the above, on October 25, 1982, the Radioisotopes Committee approved and placed into effect a waste disposal procedure which resulted in the shipment via private carrier in January 1984, and on several other occasions in 1983, and 1982, of dog carcasses containing up to 40 microcuries of Ce-144, Ru-103, Sc-46, Nb-95 as microspheres; and rat carcasses containing in excess of 0.2 microcurie per gram of H-3 in double plastic bags to another licensee for incineration, a method not specified in 10 CFR 20.301 or authorized by conditions of the NRC license as per 10 CFR 30.34(c). Additionally the licensee did not verify prior to the transfer that the transferee's license authorized the receipt of the type, form and quantity of byproduct material to be transferred by obtaining a copy of the transferee's license or a written certification from the transferee in accordance with 10 CFR 30.41(c) and 10 CFR 30.41(d). Further, the transferree who received the radioactive wastes was not the commercial waste disposal company specified in Appendix J of the July 31, 1979 application.

B. 10 CFR 71.5(a) requires that no licensee deliver any licensed material to a carrier for transport without complying with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170-189.

Contrary to the above, in January 1984 and on several other occasions in 1983 and 1982, the licensee shipped animal carcasses in double plastic bags via private carrier to another licensee's facilities and did not prepare the shipment in accordance with any of the applicable packaging, marking and labeling, monitoring, shipping paper, and mode of transport regulations in 49 CFR Parts 172, 173, and 177.

C. 10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited such that if an individual were continuously present in the area the individual could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contary to the above, on Arpil 26, 1984, a radiation level of 3.5 milliroentgen per hour existed for 40 hours in an unrestricted area at the doorway of a room containing a brachytherapy patient implanted with 60 millicuries of iridium-192. Additionally, a radiation level of 2.8 milliroentgen per hour existed at a point 1 foot from the wall in a patient's room which was adjacent to the patient's room. These radiation levels resulted in doses which exceeded the dose limits of 2 millirems in any hour and to 100 millirems in any seven consecutive days.

D. 10 CFR 20.103(b)(2) requires that whenever the intake of radioactive material by any individual exceeds that which would result from inhalation of such material for forty hours at the uniform concentrations specified in 10 CFR Part 20, Appendix B, Table I, Column 1, the licensee make such evaluations and take such actions as are necessary to assure against recurrence. 10 CFR 20.103(b)(2) further requires that the licensee maintain records of such occurrences, evaluations, and actions taken in a clear and readily identifiable form suitable for summary review and evaluation.

Contrary to the above, as of September 12, 1984, an intake of 125.9 maximum permissible concentrations (MPC) hours of iodine-125 took place on July 24, 1981, an amount 3.1 times the limits specified in 10 CFR Part 20, Appendix B, Table I, Column 1, but adequate records were not maintained to document any actions taken to prevent recurrence in a clear and identified form suitable for summary review and evaluation.

E. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of Part 30. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

10 CFR 20.103(a)(3) requires that each licensee shall make suitable

measurements of concentrations of radioactive materials in air for detecting and evaluating airborne radioactivity in restricted areas.

Contrary to the above,

1. As of September 12, 1984, no surveys were made to determine that an individual who handled one-curie quantities of hydrogen-3 labeled water and operated on rats containing up to 500 millicuries of hydrogen-3 in February, March and April, 1984 was not exposed to airborne concentrations exceeding the limits specified in 10 CFR 20.103.

2. No surveys or evaluations were made of the concentrations of radioactive materials in the effluent air discharged from a hood where one-curie quantities of hydrogen-3 labeled water were handed during February, March and April of 1984, to assure that releases to unrestricted areas were in compliance with 10 CFR 20.106.

F. 10 CFR 30.34(g) requires that each licensee test generator eluates of technetium-99m in accordance with 10 CFR 35.14(b)(4)(i)–(iv).

10 CFR 35.14(b)(4)(ii) requires that technetium-99m separated from molybdenum-99 either by elution of a molybdenum-99/technetium-99m generator or by an extraction process be tested to detect and quantify molybdeum-99 activity prior to administration to patients.

Contrary to the above, as of August 31, 1984, technetium-99m eluted from a generator was not adequately quantified for molybdenum-99 activity, because the result received was not multiplied by the dose calibrator manufacturer's stated multiplication factor. In addition, the molybdeum-99 assay results were recorded daily but were evaluated only once per week.

G. 10 CFR 19.12 requires that all individuals working in restricted areas be instructed in the applicable provisions of the Commission's regulations and licenses.

Contrary to the above, two individuals working in restricted areas had not been instructed in the applicable provisions of the Commission's regulations and licenses. Specifically, as of August 31, 1984, a nuclear medicine physician who routinely prepared radiopharmaceuticals did not know what a linearity test was, nor the purpose of such tests, and on September 12, 1984, the Radiation Safety Officer was not aware such a test was required by License No. 20–00671–02 issued November 1, 1982.

H. Condition 20 of License No. 20–00671–02 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in application dated July 31, 1979, and letter dated August 16, 1982.

1. Block 7 of this application specifies that the Radioisotopes Committee follow the responsibilities and duties as stated in Appendix B of Regulatory Guide 10.8. Items 4 and 5 of Appendix B require that the Committee review and approve all uses and prescribe special conditions for proposed use such as bioassays, air monitoring, etc.

Contrary to the above, the Committee did not review or prescribe special conditions for the use of one-curie quantities of hydrogen-3 as water prior to such use in February, March and April 1984.

2. Block 10 of this application requires that dose calibrators be calibrated in accordance with procedures contained in Appendix D, Section 2, of Regulatory Guide 10.8.

Item A.3 of Appendix D, Section 2, requires that the dose calibrator linearity be determined at installation and quarterly thereafter.

Items A.1 and C.1 of Appendix D, Section 2, require that dose calibrators be checked prior to each day's use with a long lived standard at all commonly used radionuclide settings and that control charts of instrument constancy be maintained.

Contrary to the above, as of August 31, 1984, dose calibrator constancy tests were not performed June 15, June 22, July 23, August 1, 22, 27, and 28, 1984 and the August 31, 1984 test was not performed prior to use of the dose calibrator. Additionally, as of September 12, 1984, dose calibrator linearity tests had not been performed for any of the 8 calendar quarters since the issuance of the license on November 1, 1982.

3. Block 17 of this application requires that surveys be performed in accordance with the "Area Survey Procedures" contained in Appendix I of Regulatory Guide 10.8.

Item 2 of Appendix I requires monthly surveys in laboratories using 200 microcuries or less.

Item 3 of Appendix I requires all other laboratories and waste storage areas be surveyed weekly.

Item 4 of Appendix I requires that weekly and monthly surveys consist of radiation level measurements and a series of wipe tests to measure contamination.

Contrary to the above, the specified surveys were not always performed as required. Specifically, as of September 12, 1984, wipe tests in the nuclear medicine department, where greater than 200 microcuries of byproduct material are used, were not performed weekly. Also, during the period from July 7, 1981 to September 12, 1984: a) wipe tests of the isotope preparation room were performed for only 27 of the required 165 weeks, b) wipe tests in the waste storage and injection areas were performed only for 4 of the required 165 weeks, c) wipe tests where millicurie quantities of iodine-125 were being used for iodinations were performed only once during the same time period, and d) no wipe tests had been performed in a laboratory handling 500 millicurie quantities hydrogen-3.

4. Item IV.A. of ". . . Protocol for Radiation Protection" requires that personnel exposure be maintained at the lowest practical level.

Block 15 of this application requires that radioactive material be used in accordance with Appendix G of Regulatory Guide 10.8.

Item 4 of Appendix G requires that syringe shields be used for the preparation of doses.

Contrary to the above, on August 31, 1984, an individual failed to use a syringe shield in the preparation of a flood source, a procedure which would not maintain his personnel exposure at the lowest practical level.

5. Block 7 of this application requires that the Radioisotopes Committee meet at the frequency stated in Appendix B of Regulatory Guide 10.8.

Appendix B requires that the Committee meet as often as necessary to conduct its business but no less than once each calendar quarter.

Contrary to the above, the Radioisotopes Committee did not meet during the fourth calendar quarter of 1983.

I. License Condition 8.C. authorizes the maximum amount that the licensee may possess at any one time is 2000 millicuries (2 curies) for hydrogen-3.

Contrary to the above, as of September 12, 1984 the licensee had quantities of hydrogen-3 in excess of 3 curies and had possessed such quantities since April 1984.

J. 10 CFR 71.5(a) requires that no licensee deliver any licensed material to a carrier for transport without complying with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

49 CFR 173.415(a) requires that each shipper of a Specification 7A package must maintain on file for at least one year after the latest shipment complete

documentation of tests and evaluations showing that the packaging complies with that specification.

Contrary to the above, since November 1, 1982, waste barrels bearing the marking "DOT Spec. 7A" have been routinely shipped from the hospital without maintaining documentation that the barrels meet the specification.

K. 10 CFR 20.401(b) requires that each licensee maintain records showing the results of surveys required by 10 CFR 20.201(b).

Contrary to the Above,

1. As of September 12, 1984, records were not maintained of those surveys performed to assure compliance with 10 CFR 20.301, which describes authorized means of disposing of radioactive waste. Specifically, surveys taken to assure materials held for decay-in-storage could not be distinguished from background were not recorded.

2. As of September 12, 1984, results were not recorded of surveys (evaluations) performed to assure compliance with 10 CFR 20.103 by urine bioassay of possible hydrogen-3 uptake of persons handling hydrogen-3 in excess of 100 millicuries.

Collectively, these violations have been categorized in the aggregate at Severity Level III (Supplements IV and VI).

Pursuant to the provisions of 10 CFR 2.201, Veterans Administration Hospital is hereby required to submit to this office with a copy to the Deputy Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555, within 30 days of the date of this Notice, a written statement or explanation in reply, including for each alleged violation (1) admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps that will be taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation

Dated at Bethesda, Maryland, this 20th day of December 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 85-161 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

[License No. 13-00694-03; EA 84-10]

Veterans Administration, Richard L. Roudebush Veterans, Administration Medical Center; Order Rescinding Order Imposing Civil Monetary Penalties

I

Richard L. Roudebush Veterans Administration Medical Center 1481 West 10th Street, Indianapolis, Indiana 46202, (the "Licensee") is the holder of Byproduct Material License No. 13-00694-03 (the "License") issued by the Nuclear Regulatory Commission (Commission) which authorizes medical research and development, diagnosis, and therapy. License No. 13-00694-03 was amended in its entirety on March 15, 1983, and expires on March 31, 1988.

II

As a result of a routine inspection conducted on January 9, 10, and 27, 1984, by the Commission's Region III Office, 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 on the Licensee by letter dated March 12, 1984. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with two letters both dated April 24, 1984.

Upon consideration of the Licensee's response, the Director of the Office of Inspection and Enforcement determined that with one exception, for which the penalty was remitted, the violations occurred as stated, and the penalties proposed for the violations set out in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed. An Order Imposing Civil Penalties of One Thousand Eight Hundred and Thirty Three Dollars was issued on June 19, 1984.

III

On July 18, 1984, the Licensee requested a hearing on the Order contending that the Order should not be sustained on the basis of the violations enumerated. The NRC has reviewed all the circumstances of this case, including the results of an inspection on November 20, 1984, and has concluded that the civil penalties should be rescinded.

IV

Therefore, the June 19, 1984 Order Imposing Civil Monetary Penalties is hereby rescinded.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 24th day of December 1984.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 85-162 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Change in Future Meeting Dates

December 19, 1984.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1985. All the meetings will be held in Washington, D.C. except for the November meeting which will be held in San Diego, CA. Exact times and locations will be announced at a later date.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Public Law 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atomospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 24, 25 (revised)—Thursday and Friday
March 4, 5—Monday and Tuesday
April 17, 18—Wednesday and Thursday
June 3, 4—Monday and Tuesday
July 15, 16—Monday and Tuesday
August 19, 20—Monday and Tuesday
September 30, October 1—Monday and Tuesday
November 14, 15—Thursday and Friday

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify

the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Executive Director, Steven N. Anastasion whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653-7818.

Dated: December 20, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-20 Filed 1-2-85; 8:45 am]

BILLING CODE 3510-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14073; 812-5890]

Hutton Advantaged Properties Limited Partnership, et al.; Application Pursuant to Section 6(c) of the Act for Exemption From All Provisions of the Act

Correction

In the issue of Monday, August 6, 1984, in the document beginning on page 31354, make the following correction: on page 31356, in the third column, in the file line at the end of the document, "FR Doc. 84-20686" should read "FR Doc. 84-20833."

BILLING CODE 1505-02-M

[Release No. 21189; SR-MSRB-84-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

Correction

In the issue of Monday, August 6, 1984, in the document beginning on page 31357, make the following correction: On page 31358, at the top of the first column, the file line, "FR Doc. 84-20688" should read "FR Doc. 84-20688a."

BILLING CODE 1505-02-M

[Release No. 21184; SR-CBOE-83-62]

Self-Regulatory Organizations; Chicago Board Options Exchange; Order Approving Proposed Rule Change

Correction

In the issue of Monday, August 6, 1984, in the document beginning on page 31356, make the following correction: on page 31357, in the first column, the file line, "FR Doc. 84-20687" should read "FR Doc. 84-20687a."

BILLING CODE 1505-02-M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate on section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is twelve and three fourths (12¾) percent for the fiscal quarter beginning January 1, 1985.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January-March quarter of 1985, this rate will be twelve and one-eight (12⅛) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 85-180 Filed 1-2-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2176]

Virgin Islands; Declaration of Disaster Loan Area

St. Croix Island and the adjacent Islands of St. Thomas and St. John in the Territory of the Virgin Islands constitute a disaster area as a result of flooding and severe wind and water damage which occurred November 5 through 7, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on February 19, 1985, and for economic injury until the close of business on September 23, 1985, at the address listed below:

Disaster Area 1 Office,
Small Business Administration,
15-01 Broadway,
Fair Lawn, New Jersey 07410,
or locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 217611 for physical damage and for economic injury the number is 623900.

Dated: December 21, 1984.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Robert B. Webber,

Acting Administrator.

[FR Doc. 85-181 Filed 1-2-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/796]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 14, 1985 at 10:00 a.m. in Room 2925, Department of State, 2201 C Street, NW., Washington, D.C.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting on February 14 is to review the results of the National Committee's ad hoc groups (Special S and Preparatory Committee for the World Administrative Telegraph and Telephone Conference (PC/WATTC) as announced in a separate Federal Register notice), and to prepare U.S. contributions and positions with regard to the international meetings of the CCITT dealing with such matters.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entrance to the building.

Dated: December 24, 1984.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

[FR Doc. 85-99 Filed 1-2-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/795]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 3:00 PM, Thursday, January 31, 1985, in Room 1207, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the January 31 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1207.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Friday, February 1, 1985, at the National Academy of Sciences, 2101 Constitution Avenue, NW., in sessions that will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 632-3262.

James L. Malone,

Chairman.

[FR Doc. 85-98 Filed 1-2-85; 8:45 am]

BILLING CODE 4710-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Office whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Office for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2522, FTS 858-2522.

Type of Request: Regular.

Title of Information Collection: 1985 Commercial and Industrial Survey: Customers of Municipal and Cooperative Distribution of TVA Power.

Frequency of Use: Every 3 to 4 years.

Type of Affected Public: Businesses and small businesses.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 4,000.

Estimated Total Annual Burden Hours: 1,667.

Estimated Annual Cost of TVA: $210,278.

Need For and Use of Information: The 1985 Commercial and Industrial Survey will provide information about the 320,000 commercial and industrial customers served by the municipal and cooperative distributions of TVA power. This information is required by numberous branches within the agency for load forecasting and programming purposes.

Dated: December 24, 1984.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-104 Filed 1-2-85; 8:45 am]

BILLING CODE 8120-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supp. to Dept. Cir. Public Debt Series—No. 40-84]

Treasury Notes; Series Q-1988

Washington, December 27, 1984.

The Secretary announced on December 26, 1984, that the interest rate on the notes designated Series Q-1988, described in Department Circular—Public Debt Series—No. 40-84 dated December 19, 1984 (49 FR 50141), will be 10⅝ percent. Interest on the notes will be payable at the rate of 10⅝ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-33813 Filed 12-31-84; 8:45 am]

BILLING CODE 4810-40-M

[DEPT. CIRC. Public Debt Series—No. 41-84]

Treasury Notes of January 15, 1992; Series D-1992

Washington, December 26, 1984.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, Untied States Code, invites tenders for approximately $5,750,000,000 of United States securities, designated Treasury Notes of January 15, 1992, Series D-1992 (CUSIP No. 912827 RT 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the

securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2. 1. The securities will be dated January 4, 1985, and will bear interest from that date, payable on a semiannmual basis on July 15, 1985, and each subsequent 6 months on January 15 and July 15 until the principal becomes payable. They will mature January 15, 1992, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nombusiness day, the interest or principal is payable on the next-succeeding business day.

2. 2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be abvailable to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 2, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 1, 1985, and received no later than Friday, January 4, 1985.

3. 2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3. 3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Friday, January 4, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds

immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, January 2, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, January 4, 1985. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5. 4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allottments.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-33744 Filed 12-31-84; 8:45 am]

BILLING CODE 4810-40-M

[Dept. Cir. Public Debt Series—No. 42-84]

11⅝% Treasury Bonds of 2004

Washington, December 26, 1984.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $4,250,000,000 of United States securities, designated 11⅝% Treasury Bonds of 2004 (CUSIP No. 912810 DM 7). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2. 1. The securities will be issued January 8, 1985, and are offered as an additional amount of 11⅝% Treasury Bonds of 2004 (CUSIP No. 912810 DM 7) dated October 30, 1984. Payment for the securities will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from October 30, 1984, to January 8, 1985. Interest on the securities offered as an additional issue is payable on a semiannual basis on May 15, 1985, and each subsequent 6 months on November 15 and May 15 until the principal becomes payable. They will mature November 15, 2004, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2. 2. The securities are subect to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,00,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, January 3, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, January 2, 1985, and received no later than Tuesday, January 8, 1985.

3. 2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an

annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3. 3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for, plus accrued interest as specified in Section 5 (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 12.25% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 95.250. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from October 30, 1984, to January 8, 1985, in the amount of $22.39551 per $1,000 of securities allotted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, January 8, 1985. Payment in full (including accrued interest) must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, January 4, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 8, 1985. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5. 4. Delivery of securities in registered form will be made after the

requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-33846 Filed 12-31-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 2
Thursday, January 3, 1985

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).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, December 27, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED. Fiscal Year 1986 Budget.

The Commission will consider issues related to the Budget for Fiscal Year 1986.

Note.—The Commission voted that agency business required holding this meeting without the usual advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-34014 Filed 12-28-84; 4:36 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, December 26, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Fiscal Year 1986 Budget.

The Commission will consider issues related to the Budget for Fiscal Year 1986.

Note.—The Commission voted that agency business required holding this meeting without the usual advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-34015 Filed 12-28-84; 4:36 pm]

BILLING CODE 6355-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

[38796]

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:25 a.m. on Friday, December 28, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation with respect to administrative enforcement actions against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: December 28, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 84-34017 Filed 12-31-84; 10:53 am]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, January 8, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE & TIME: Thursday, January 10, 1985 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidtates to receive presidential primary matching funds
Draft advisory opinion #1984-60, W. Patrick Mulloy, II
Draft advisory opinion #1984-61, Elaine Acevedo, Government Affairs Director
Proposed revisions to the testing the waters regulations [11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3]
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-34023 Filed 12-31-84; 2:47 pm]

BILLING CODE 6715-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-1]

TIME AND PLACE: 9 a.m., Tuesday, January 8, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first two items will be open to the public; the remainder will be

closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report—Derailment of Amtrak Train No. 21 (The Eagle) on the Missouri Pacific Railroad, Woodlawn, Texas, November 12, 1983.
2. Railroad Accident Report—Rear-End Collision between Conrail Trains OIPI–6 and ENPJ–6X, near Saltsburg, Pennsylvania, February 26, 1984.
3. Opinion and Order—Administrator v. Beguin; disposition of the Administrator's appeal.
4. Order—Dismissing petition for rehearing; Administrator v. Brehany, Dkt. SE–5806.
5. Opinion and Order—Petition of Nelson, Dkt. SM–3178.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

December 28, 1984.

[FR Doc. 84–34016 Filed 12–28–84; 5:05 pm]

BILLING CODE 7533–01–M

federal register

Thursday
January 3, 1985

Part II

Department of Labor

Employment Standards Administration

20 CFR Parts 701, 702, and 703
Longshore and Habor Workers' Compensation Act and Related Statutes; Interim Final Rule With Request for Comments

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: Congress passed and on September 28, 1984, President Reagan signed into law, the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1639. This legislation made many substantive changes to the Longshore Act (33 U.S.C. 901 *et seq.*), including adding an exemption from the Act's jurisdiction for certain specified categories of employees, a certification procedure provision for exempting from the Act's coverage facilities engaged in the business of building, repairing or dismantling exclusively small vessels, and provisions granting to the Secretary or the Secretary's designee authority to exclude persons found to have commited certain specified fraudulent practices from participation in the program as physicians or health care providers, or as representatives of persons seeking benefits under the Act.

These interim final rules implement these changes and the other amendments made by the enactment of Pub. L. 98-426, and make certain technical corrections in the implementing regulations as previously promulgated in 1973 and 1977. The promulgation of these rules as interim final is authorized under the Administrative Procedure Act 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is necessary because the Longshore Act provides that most of the statutory changes will become effective on the date of enactment, or within ninety days after enactment (December 27, 1984) and that the amendments will apply to all pending as well as new claims filed under the Act.

DATES: These interim final regulations become effective on December 27, 1984, and will remain in effect no later than October 1, 1985, unless extended or superseded by another issuance. Written comments must be received on or before March 4, 1985.

ADDRESS: Written comments should be sent to Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-3524, Washington, D.C., 20210, Telephone (202) 523-7503. Written comments received may be inspected at Room S-3524 between 8:15 a.m. and 4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Tel. (202) 523-7503. This is not a toll free telephone call.

SUPPLEMENTARY INFORMATION: The Longshore and Harbor Workers' Compensation Act, originally enacted in 1927 (Pub. L. 803, 44 Stat. 1424), is designed to provide a statutory basis pursuant to which certain employees injured during the course of their work for a covered employer might receive compensation benefits and medical care for such injury. The Act also provides for the payment of benefits to the survivors of such employees under certain circumstances.

In 1972, the Congress amended the Longshore Act (Pub. L. 92-576, 86 Stat. 1251) to, among other things, expand the coverage of the Act to certain employees engaged in maritime employment on land, amend the level of benefits payable to the survivors of certain permanently disabled employees who died from causes unrelated to the compensable injury, and revise the procedure for the adjudication of contested claims by requiring that hearings be conducted by administrative law judges and by establishing, in the Department of Labor, the Benefits Review Board to review such decisions, subject to further appeal to the appropriate United States court of appeals and ultimately the Supreme Court of the United States.

Beginning in 1977, the respective labor committees of the Senate and of the House have conducted a series of oversight hearings on the LHCWA and on the impact of the 1972 amendments. During this review, Congress considered many proposals to amend the law to eliminate difficulties which had arisen in its implementation, while at the same time assuring that all of those deserving of compensation received adequate and timely benefits. This review process culminated with the enactment of Pub. L. 98-426. These interim final rules implement Pub. L. 98-426.

Set forth below is a summary of the more substantive changes to the regulations governing the administration of the Act which are required by the 1984 amendments. To help the reader, these sections first describe the Act before the 1984 amendments; this is always referred to as the "Act". The provisions of the 1984 amendments ("the statute" or "the amendments") are then described. Finally, the regulations ("the rules" or "regulations") are explained.

Coverage

Sections 2 and 3 of the Act define its terms and delineate the Act's coverage. Coverage concerns which employers are subject to the Act and which employers are entitled to its benefits.

Section 2(3) of the Act defines the term "employee." That definition in the Act specifically excluded two categories of workers: a master or member of any vessel, and any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

The 1984 amendments affect the coverage of the Act in two ways. First, the amendments add several categories to those specific categories of workers expressly excluded from the definition of "employee". Second, the amendments allow certain small vessel facilities to seek from the Secretary of Labor a certificate of exemption from coverage.

Section 2(a) of the amendments revised the definition of employee set forth in section 2(3) of the Act to expressly exclude specified categories of workers from coverage under the Act. The law now expressly excludes:

—Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
—Individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
—Individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
—Individuals who (1) are employed by suppliers, transporters, vendors, (2) are temporarily doing business on the premises of a covered employer, and (3) are not performing work normally performed by employees of that employer;
—Aquaculture workers; and
—Individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length.

The legislative history of the amendments indicates that these exclusions from coverage must be narrowly construed and, further, that such exclusions apply only where the individual(s) is covered under a State workers' compensation law. See 130 Cong. Rec. H2465 et seq. (Daily Ed. April 9, 1984); 130 Cong. Rec. H9597-8 (Daily Ed. September 14, 1984); 130 Cong. Rec. H9731, H9733-4 (Daily Ed. September 18,

1984), 130 Cong. Rec. S11622-3 (Daily Ed. September 20, 1984).

To effectuate this amendment, the definitional section of these regulations (§ 701.301) is revised to define those persons who will qualify as "employees" and to expressly exclude those workers not covered by the Longshore Act. The regulations repeat the statutory language in listing these categories of workers in the definition in § 701.301(12). The regulations do not define the terms except where the legislative history provides guidance. Some general comments on these revisions are set forth below.

First, the 1984 amendments expressly excluded "individuals employed exclusively to perform office clerical, secretarial, security, or data processing work." Section 2(3)(A), Longshore Act as amended. Consistent with the express direction of the Conference Report, employees classified as longshore cargo checkers and clerks and other individuals performing tasks necessary to the documentation and other work related to cargo movement are not excluded from the Act's coverage.

Next, the regulations define club ("a social or fraternal organization, whether profit or nonprofit") based on the guidance provided in the House report (Committee on Education and Labor, H. Rept. No. 98-570, 98th Congress 1st Sess. (November 18, 1983)) and in the Conference Managers Statement (H. Rept. 98-1027, *Supra*). The regulations describe the activities which may constitute "routine maintenance" by marina workers (cleaning, painting, trash removal, housekeeping and small repairs) based on clarification provided in H. Rept. 98-570, *Supra*. The term "aquaculture" is defined by the regulations as a commercial enterprise involved in the controlled cultivation and harvest of aquatic plants and animals, consistent with the definition in the Senate Report; the Manager's Report emphasized that the term also included the cleaning, processing or canning of fish (H. Rept. 98-1027, *Supra*) and that language has been used in the regulations.

The Department is particularly interested in receiving comments concerning the interim final definition of "recreational operation" and "recreational vessel", as used in amended subparagraphs (B) and (F) of section 2(3) of the Act. The regulations define "recreational operation" to include recreational scuba diving and commercial rafting and canoeing expeditions. The legislative history states that the term was added to exclude boatworkers engaged in "the most popular tourists activities [such as] a float trip down many of our beautiful rivers and streams." Statement of Senator James McClure, 129 Cong. Rec. S8660 (Daily Ed. June 16, 1983). See also Statement of Senator Orin Hatch, 129 Cong. Rec. S8662 (Daily Ed. June 16, 1983), wherein he indicates that the purpose of the amendment is intended to exclude professional boatworkers or guides, e.g., professional river trip outfitters. Congressman John Erlenborn stated that "recreation operations" also included recreational scuba diving. 130 Cong. Rec. H. 9733.

The new section 2(3)(F) of the Act excludes from the definition of employee "individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length."

The statute does not, however, define what is meant by the term "recreational vessel" other than providing a way to determine the length of the craft in question. The regulations define how a vessel shall be measured, following the method set forth by the Coast Guard in determining the length of vessels (that is, the length is to be measured from the foremost part of the stem to the aftermost part of the stern). They do not, however, define the term further and specific comments are requested as to whether and/or what changes should be made to the interim final definition of "recreational vessel."

The second change made by the amendments which affect coverage of the Act is a new section 3(d), which authorizes the Secretary of Labor to certify that an employer's "facility is engaged in the business of building, repairing, or dismantling exclusively small vessels" and thereby to exclude such land-based facility and persons employed at that facility from the Act's coverage. The amendments define the term small vessel to mean: (1) A commercial barge under 900 lightship displacement tons; (2) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel or other work vessel under 1,600 tons gross.

The regulations repeat this definition and explain the terms "displacement tons" and "gross tons" using guidance provided in the legislative history. Moreover, the term "commercial", as used in conjunction with vessel, is defined to exclude from the definition types of vessels (military supply boats, patrol boats, utility vessels, ferries, corps of engineers dredges, pressure barges or Coast Guard vessels) consistent with the description provided in the legislative history. Since the amendments require the Secretary to certify that such facilities are exempt, a procedure for the filing, processing and granting or denying a certificate of exemption are set forth in §§ 702.171-702.175 of these regulations.

As defined in these regulations, a "facility" includes an employer's business operation so long as it is located at a particular contiguous geographic location. While this term will generally apply to the entire operation of an employer, these rules would not prohibit an employer from applying for and receiving a certificate of exemption for only part of its operation, so long as the area for which the exemption is sought and the work engaged in is clearly segregated from the rest of the employer's premises and/or activities. The exemption does not apply to injuries sustained upon the navigable waters of the United States, or upon any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels, since those areas continue to be subject to the Act's coverage; the exemption is also inapplicable if the employee is not covered by a State compensation act.

The certification process set out in the regulations is designed to be initiated by the facility and is self-enforcing. The first step in the certification process is for the owner or manager of the facility seeking an exemption to provide to the Associate Director for Longshore the information described in § 702.174, which includes: The name of the facility, its location and the nature of its business, and an affidavit affirming that the facility is engaged in building, repairing or dismantling exclusively small vessels and has secured appropriate compensation liability under the State act. The applicant is also required to acknowledge the duty to inform the Associate Director, of circumstances which would void any exemption and that an exemption procured under false information would be invalid retroactively. The information required is considered by the Department to be the minimum required to ensure that the facility meets the criteria for exemption established by the amendments. In addition, it makes clear to the applicant its future duties in regard to work on other than small vessels. The regulations also require that, once the certification of exemption is effective, the employer must notify its workers through a simple posting procedure. The posted notice must state that injuries at the facility are no longer covered by the Act, the basis of the exemption and its effective date, as well as grounds for termination. Awareness by all parties of when coverage ceased will help ensure better administration of the Act. Employers are reminded that States may require posting regarding

employee rights under State workers compensation programs.

Section 702.175 states that the certificate of exemption will automatically terminate if the facility works on a vessel not included within the definition of "small vessel" as set forth in section 3(d) of the amendments and § 702.172 of the rules, or if the facility receives Federal maritime subsidies. This requirement follows the guidance provided in the legislative history. The regulations provide for automatic termination of the exemption, then set forth the procedure whereby an employer may apply for reinstatement of the certificate of exemption. Although there are some statements in the legislative history suggesting that the exemption might automatically be reinstated once the facility is again engaged in exclusively small vessel operations, the Department believes that proper administration of this statute requires that the Secretary and other persons whose rights under the Act may be affected should know exactly when exempted operations ceased and that the employer in fact qualifies anew for the exemption. A streamlined reapplication process is instituted to ensure this certainty. Comments are particularly requested on the provisions for reinstatement of the exemption.

The regulations also provide that the decision granting or denying a certificate of exemption is not subject to review in proceedings conducted pursuant to section 19 (ALJ hearings) or 21 (Benefits Review Board) of the Act. Consistent with the implementation of section 32 of the Act and with the Department's existing procedures regarding authorization of self insurors, the Department believes it is appropriate to provide that this decision is a matter vested exclusively within the authority of the Secretary. A denial of certification or of authorization is therefore not subject to ALJ or BRB review.

An individual excluded from the definition of "employee" under the definitions in section 2(3) (A) through (F) of the Act as amended or through the exemption from coverage under section 3(a), must, for any injury sustained after September 28, 1984, first apply under a State workers' compensation act before seeking benefits under the Longshore Act. This procedure is required as a matter of Federal law and therefore supercedes any provisions of State law which are inconsistent therewith. The legislative history makes it clear that the time for filing a claim under the Longshore Act does not begin to run until "the State tribunal authoritatively interprets its law to deny coverage." Statement of Senator Hatch, 130 Cong. Rec. S11623. The denial of a State claim on procedural grounds, however, would not entitle the otherwise excluded worker to proceed with the Longshore Act claim. Statement of Congressman Erlenborn, 130 Cong. Rec. H9733.

Exclusion of Physicians, Health Care Providers, and Representatives of Claimants

Prior to the 1984 amendments, the Secretary could order a change of physicians or hospitals when it was desirable or necessary in the interest of the injured employee. There was no provision to exclude health care providers or claims representatives from involvement in claims filed under the Act. However, the Secretary could remove authority to render medical care under the Act. Pub. L. 98-426 amended the Longshore Act to add the authority to order a change of physicians or hospitals if charges for treatment are excessive. Debarment of health care providers and claims representatives is also authorized under the amendments.

Section 7(c) of the Longshore Act was amended to require for the first time that the Secretary annually publish a list of physicians and health care providers, such as hospitals, clinics, etc., which are not authorized to render medical care or provide services under the Act. That section sets forth the grounds upon which the Secretary may exclude a person from participation in the program (including the denial of the right to seek reimbursement for any care or service provided to injured workers) and establishes the procedure to be followed before a physician may be excluded. The amendments provide that these procedures include the opportunity for a hearing conducted in accordance with the Administrative Procedure Act and the right to appeal an adverse decision to the United States Court of Appeals for the judicial circuit in which the person resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia. The filing of such an appeal will not, however, stay the effect of the decision excluding the physician or health care provider. Longshore Act, section 7(j)(4).

The regulations implementing this amendment are set forth at §§ 702.431-702.436. These regulations repeat the grounds for debarment listed in the statute. The debarment procedures are then described. The Longshore Act is administered by the Office of Workers' Compensation Programs (OWCP) which also administers the Federal Employees Compensation Act (FECA). The debarment procedures described in these regulations were derived, where appropriate, from the FECA debarment procedures (see 20 CFR 10.137). This was done to maximize consistency in administration of the two workers' compensation programs.

The regulations recite the appeal process provisions for excluded persons set out in the statute. The regulations also describe the procedure for the publication of the list of debarred persons.

The procedures provide for an investigation by the appropriate OWCP deputy commissioner, the opportunity for a hearing before an administrative law judge who will issue a recommended decision based on the evidence produced during the hearing, and a final administrative decision by the Deputy Under Secretary for Employment Standards. The statute authorizes the Department to issue subpoenas, as necessary, to carry out its responsibilities under these provisions. Longshore Act section 7(j)(3). Judicial review of the decision to disqualify may be obtained by appeal to the appropriate United States Court of Appeals. An appeal must be filed within 60 days after the Deputy Under Secretary's final decision is mailed to the disqualified person and/or that person's attorney.

The Secretary is also required to publish a list of individuals who have been disqualified from representing claimants under the Act. The grounds for disqualification are set forth in section 31(b)(2)(B) of the Longshore Act, as amended. The procedures to be followed are the same as those applicable to physicians and health care providers.

The regulations governing the disqualification of claimant representatives are set forth at §§ 702.131 (b) and (c). These regulations repeat the grounds for debarment provided for in the statute.

In administering these provisions, the Department will be guided by the legislative history which noted that

> * * * disqualification is an extraordinarily drastic step, which should only be taken in circumstances where the physician or health care provider involved has been found to have engaged in truly egregious conduct which threatens the integrity of this or any other worker's compensation program * * *. Committee on Education and Labor, H. Rept. No. 98-570, 98th Cong. 1st Sess. (November 18, 1983) p. 13.

A similar statement was made concerning the disqualification of claimants' representatives. H. Rept. 98-570, *supra*, pp. 15-17.

Therefore, before a person may be disqualified it must be established that the person involved knowingly and willingly engaged in the fraudulent conduct proscribed by section 7(c)(1)(B) or section 31(b)(2)(B) of the Longshore Act, as amended. In all cases, the evidence must be sufficient to establish each factor required by the amendments to justify disqualification. Authenticated copies of judgments of conviction or orders excluding a person from participation in any Federal or State program will, however, be considered adequate evidence to justify disqualification under sections 7(c)(1)(B)(iv) or (v) and 31(b)(2)(B) (ii) or (iii), respectively.

Settlements

Settlements under the Act prior to the 1984 amendments took three forms: (1) Settlements of compensation benefits, (2) settlements of medical benefits and (3) commutations of compensation benefits. Settlements were to be evaluated according to the best interests of the injured employee, settlement of death claims was not permitted, and commutations were to be evaluated according to the "interest of justice".

Pub. L. 98–426 amended section 8(i) of the Longshore Act to authorize administrative law judges, as well as OWCP deputy commissioners, to approve (or reject) proposed settlements of claims filed under the Longshore Act. The commutation provision under section 14(j) has been eliminated, and death benefits can now be settled by the beneficiaries. The amended statute provides that settlement agreements shall be approved within 30 days after submission and, further, that where both the employer and claimant are represented by an attorney, a settlement shall be deemed approved unless specifically disapproved within 30 days after submission. Under the amendments, a proposed settlement may be disapproved only if it is found to be inadequate or procured by duress. This amendment is effective on December 27, 1984 and applies to pending claims as well as to claims filed after that date.

The rules governing these amendments are set forth beginning at § 702.241. The regulations specify: the information that must be submitted in support of the proposed settlement (§ 702.241); the criteria to be used in evaluating the proposed settlement (§ 702.243); and procedures to be followed in the event that a proposed settlement is not approved by the deputy commissioner, e.g., a hearing before an Administrative Law Judge who may approve or reject the settlement based on the evidence submitted at the hearing. In addition, the regulations provide that when a claim is pending before the Office of Administrative Law Judges, the application for approval of a settlement shall not be submitted less than five (5) days before the hearing is scheduled. This limitation is essential to ensure that the application is reviewed by an administrative law judge who has the opportunity to question the parties to the settlement in person and thereby to evaluate the proposal and render a reasoned judgment on whether the proposal should be rejected as "inadequate or procured by duress." Ordinarily, mail regarding a formal hearing is not reviewed until the case is assigned to be heard. This may take longer than 30 days. Therefore, without this limitation, a settlement could be approved within the meaning of the amendments without appropriate review. If the parties agree to settle the claim before a hearing is scheduled they may request that the matter be remanded to the deputy commissioner which will result in an early resolution of the case.

Although, as noted above, Congress has retained the requirement that settlements must be approved to be effective, it has established a time limit within which that review must be completed in order "to eliminate complaints of administrative delays". S. Rept. No. 98–81, 98th Cong. 1st Session (1983) p.37. The penalty provisions of section 14(f) of the Act do not apply to a settlement until it has been specifically approved or at the end of the thirty days when the parties are represented by counsel. To ensure uniformity in the review of settlement agreements § 702.243(f) of the regulations specifies the criteria to be considered in determining whether the settlement should be approved. Many of these criteria were being utilized prior to the amendments and were required to be considered by administrative law judges pursuant to the decision of the Benefits Review Board in *Clefstad* v. *Perini North River Associates*, 9 BRBS 217, BRB No. (1978).

In those cases where basic factual issues are in dispute and no compensation order has been issued, the adequacy of an agreement depends on all the circumstances and must be decided on a case-by-case basis. Therefore, no attempt has been made in the regulations to define the term "inadequate" other than to provide criteria for evaluating the proposed settlement.

In cases where a final compensation order exists and there are no issues as to continuing entitlement or the amount of benefits payable, a definition of what settlements should be deemed inadequate is possible and is set forth at § 702.243(g) of the regulations. Although Congress repealed section 14(j) of the Act, which provided a formula for the commutation of benefits being paid pursuant to an award, the Senate Report stated that "lump sum settlements are still permitted under section 8(i)." S. Rept. No. 97–498, 97th Cong. 2d Sess. (1982) p. 36; S. Rept. No. 98–81, 98th Cong. 1st Sess. (1983) p. 37. These statements reflect a recognition of the fact, as stated by Professor Larson in his treatise on workers' compensation, that

> [1] lump-sum settlements, when they are authorized by statute, are not compromises in the usual sense; that is, they do not assume concessions and adjustments in the amount of payment because of the existence of a disputed issue. Rather, they are essentially commutations, and should be calculated on a sound annuity basis in accordance with any statutory rules provided. Larson, *The Law of Workmen's Compensation*, Vol. 3, § 82.71, p. 15–590–1. (Footnotes omitted).

Section 702.243(g) does provide a sound annuity basis for determining the adequacy of these settlements.

Under the regulations, in cases where there is a final decision and no substantive issues are in dispute, the Department will determine whether the amount of the proposed settlement is equal to the present value of the future compensation payments which the claimant or beneficiary would receive under the award, computed at a 5 per centum true discount compounded annually. The Department has adopted the 5 per centum true discount figure since it is the discount figure most frequently used by States, as revealed in a survey of State compensation programs. In determining the life expectancy of the person receiving benefits, the Department will apply the most current United States Life Tables as developed by the Department of Health and Human Services.

Interested parties are requested to submit comments on the discount rate established by these rules.

Under the amendments, the parties may settle any claim for compensation, including future medical benefits, or a claim for survivor benefits. Under no circumstances, however, may a person seeking benefits under section 7 or 8 of the Longshore Act settle a claim for survivor benefits which may be filed under section 9 of the Act only after the death of the injured worker. Thus, even though the injured worker may have

settled his or her claim for compensation, such agreement would not prevent a survivor from pursuing a claim for benefits under section 9.

The enactment of Pub. L. 98–426 also addressed the issue of whether an employer could seek to limit its liability under section 8(f) of the Act after having settled the employee's claim and whether a party may seek to modify a settlement approved under section 8(i). The Congress determined that once a claim is approved (1) the employer could not subsequently seek relief or reimbursement for amounts it paid from the special fund, and (2) settlements are not subject to modification under section 22 of the Longshore Act. See sections 8(i)(4) and 22 of the Longshore Act as amended (Pub. L. 98–426, sections 9(g) and 16, 98 Stat. 1646, 1650); Conference Report pp. 32–33 (H. Rept. 98–1027). The regulations change the prior language of the rules to reflect these statutory changes.

Special Fund, Second Injury Cases

Section 8(f) of the Act was designed to remove the incentive for employers to discriminate against the hiring or retention of handicapped employees. An employer's liability was limited (in cases of a job-related injury that combined with a manifest existing permanent partial disability to result in a greater degree of permanent disability) to the payment of a specified number of weeks of compensation. The remaining liability was shifted to an industry (authorized self-insured employers and carriers) financed special fund.

Prior to the 1984 amendments the Act did not require that requests for section 8(f) relief be presented to the deputy commissioner or the Director, OWCP (the administrator of the special fund). The Act did not specifically provide the right of the Director, OWCP to recover, through third party actions, benefits paid from the special fund. Access to the special fund by unauthorized employers or insurance carriers was not prohibited. The contributions to the industry financed special fund were based upon the amount of compensation and medical benefits paid by each employer or insurance carrier in the prior calendar year.

To ensure that the OWCP deputy commissioner and Director—as administrator of the special fund—have an opportunity to consider the merits of the employer/carrier's request for a limitation of its liability (and thereby to prevent the practice of presenting such requests in the first instance to an administrative law judge), Pub. L. 98–426 requires that all requests for relief under section 8(f) must first be presented to the deputy commissioner together with a statement documenting the employer's entitlement to relief. The law also grants the legal authority for the Director to assert the lien of the special fund in third party proceedings.

Two additional amendments brought about by the enactment of Pub. L. 98–426 are intended to insure the financial integrity of the Special Fund. First, section 8(f) of the amended Act expressly states that the special fund is not available to pay for the liability of an uninsured employer. Thus, an employer which has not complied with the provisions of section 32 is not entitled to limit its liability under section 8(f) of the Act. This amendment (Pub. L. 98–426 section 8(e), 98 Stat. 1645) was effective on the date of enactment (September 28, 1984) and applies to pending claims as well as to claims filed after the effective date.

Second, Congress amended the formula by which the Secretary is to determine how much each authorized self-insured employer and insurance carrier will be required to pay into the special fund. Under the new formula set forth in section 44(c)(2) of the Act as amended, the employer/carrier's assessment will be based not only on the amount of benefits it directly paid as compensation during the preceding calendar year but also on the payments made by the special fund under section 8(f) which are attributable to that employer/carrier. This change was made, according to Congressman Miller, because

> * * * some employers have taken steps to assign hundreds, even thousands, of cases to the fund, knowing that no matter how many cases they assigned, their proportion of payments to the fund would not grow. In effect, they knew that they could pass along their costs to all other participants in the program.
>
> The new formula in S. 38 bases an employer's assessment in part on his overall program participation, and half on his past utilization of the fund. This formula will, at once, dissuade the dumping of cases into the fund, and will more equitably apportion the responsibility. 130 Cong. Rec. H9732

Senator Nickles described the effect of the new formula, stating:

> The House and Senate committees attempted to rectify the problems as described in the two committee reports. (H. Rept. 98–570, pp. 20–21 and S. Rept. 98–81, pgs. 34–35.) While considering the differences, an alternative approach in the form of a new assessment formula was devised and agreed to by most concerned employers/carriers. The new formula takes into account the amount of fund cases each employer/carrier has and strikes an average between the actual payouts of the old formula and use of the fund. Under this formula, abuse of the Fund will be discouraged and assessments to all concerned will be equitable. There will be changes up or down in every industry, but all will be treated equally. The new formula is section 24(a) of the conference reported S. 38. 130 Cong. Rec. S11621.

The rules governing the contents of the application for section 8(f) relief, the limited grounds permissible for excusing the failure to submit such application, and the time periods specified for the filing of the application are set forth at § 702.321. This section incorporates the three criteria necessary for special fund relief: (1) A pre-existing permanent partial disability, (2) which was manifest to the employer prior to the second injury and (3) which contributes to the subsequent disability.

Upon receipt of the request for section 8(f) relief, the deputy commissioner will afford the employer up to 90 days to develop and/or obtain evidence to support its request. This period will be extended upon a showing of good cause but not beyond the date of the informal conference. The deputy commissioner will investigate the application, to the extent appropriate, and will, upon request, issue subpoenas *duces tecum* where necessary to compel the production of documentary evidence. The Benefits Review Board has upheld the right of the deputy commissioner to issue such subpoenas. *Rabb* v. *Marine Terminals Corp.*, 11 BRBS 498, BRB No. 78–628 (1979). If the employer fails to properly raise the section 8(f) issue with the deputy commissioner, that failure will constitute an absolute defense to the special fund's alleged liability to pay any benefits in connection with that claim.

The amendments to section 8(f) were effective September 28, 1984, and apply to claims then pending as well as to claims filed on or after that date. Pub. L. 98–426, section 28(a), 98 Stat. 1655. Thus, unless the employer has presented the issue of potential special fund liability to the deputy commissioner before a claim was referred to the Office of Administrative Law Judges (OALJ) for a hearing, that employer may not be entitled to an award limiting its compensation liability by virtue of section 8(f) of the Act. To ensure compliance with this particular amendment, employers may request, or the administrative law judge may order, that the claim be remanded to the deputy commissioner for consideration of the section 8(f) issue. Under these regulations, the deputy commissioner will transfer to the OALJ not only the request for a hearing and statement of contested and uncontested issues (LS

18), but also the application for relief under section 8(f) submitted by the employer/carrier and the deputy commissioner's informal decision. Where no application for 8(f) relief was presented to the deputy commissioner, that fact will be reflected in the documents sent to the OALJ. To ensure compliance with the Congressional directive that all requests for relief under section 8(f) must first be considered by the administrators of the special fund, the Director or his/her representative—the Associate Solicitor for Employee Benefits—must be given the opportunity to review any additional evidence or argument submitted by the employer before an administrative law judge may rule on the employer's request for relief under section 8(f).

The regulations incorporate the statutory language granting the special fund a lien in third party settlements. The regulations also incorporate the new formula, provided by the statute, to assess contributions to the special fund. The regulations also prohibit access to the special fund by unauthorized employers or insurance carriers, as provided for in the amendments.

Occupational Disease

Occupational disease claims, prior to the 1984 amendments, frequently involved very complex legal issues, such as when did the "injury" occur for purposes of determining the claimants' average weekly wage or wage-earning capacity.

Another issue concerned the timeliness of claims for benefits. The time of injury was variously interpreted to mean the date of last exposure or the date the disease becomes manifest. In *Aduddell* v. *Owens-Corning Fiberglass*, 16BRBS 131 (1984), for example, the Benefits Review Board held that employees who retired before their occupational disease became manifest were not entitled to compensation. The Board denied benefits because the claimant could not establish that the injury affected his wage earning capacity. Similarly, the widow of a deceased worker whose employment related disease manifested itself and caused death after retirement would not be entitled to receive survivor's benefits.

Pub. L. 98–426 amended the law in several significant respects with regard to the filing and adjudication of claims involving occupations diseases. First, sections 12 and 13 of the Act were amended to provide that in those cases where the job related disease does not immediately result in disability or death, the time within which the employee must notify the employer and/or file a claim does not begin to run until the employee or beneficiary is aware, or should have been aware by the exercise of reasonable diligence or by reason of medical advice, of the relationship between the employment, the disease, and the disability or death. In these cases, the amendments provide that notice must be given within one year and the claim for compensation must be filed within two years of such awareness, respectively.

Congress amended section 2(10) of the Longshore Act to define disability to mean

> permanent impairment, determined (to the extent covered thereby) under the Guides to the Evaluation of Permanent Impairment promulgated and modified from time to time by the American Medical Association. * * *

with respect to those cases where the occupational disease manifests itself subsequent to the date of retirement. It further amended the Act to provide a specific method for compensating these injured workers and their survivors. Longshore Act section 8(c)(23), 9(e)(2), and 10(d)(2) as amended. In adopting these amendments, Congress specifically rejected the decisions issued by the Benefits Review Board in *Dunn* v. *Todd Shipyards*, 13 BRBS 647 (1981), and *Aduddell* v. *Owens-Corning Fiberglass*, 16 BRBS 131 (1984). Conference Report (H. Rept. 98–1027) pp. 29–30. For these provisions to apply, it must be shown that the claimant is retired (defined as one who voluntarily withdrew from the workforce) and that there is no realistic expectation the person will return to the workforce. The legislative history makes it clear that eligibility under section 8(c)(23) does not include entitlement to a permanent total disability award but is limited to an award based on the degree of impairment. Statement of Senator Hatch, 130 Cong. Rec. at 11625. For this reason, the benefits payable are not subject to annual adjustment under section 10 of the Act.

The rules implementing these amendments are set forth at §§ 702.212–702.217; 701.224–702.221; and 702.601–702.604. These regulations incorporate statutory language.

Hearing Loss

The Act did not single out hearing loss claims from any other injuries. In special fund/second injury cases under section 8(f), for example, the employer's liability for a hearing loss where there was a pre-existing loss was the same as for any other type of injury: the *greater* of 104 weeks or the amount of loss directly attributable to that employment.

The amendments, however, distinguish hearing loss claims from other injuries in several areas. In special fund/second injury cases, the employer's liability for hearing loss is limited to the *lesser* of 104 weeks or the amount attributable to the employment. Also, the amendments afford audiograms presumptive evidentiary weight if performed according to set standards, and the amendments prescribe that the extent of hearing loss must be determined in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. Finally, the amendments specify that time limitations do not begin to run until an audiogram with a report showing a hearing loss is furnished the employee.

The regulations implement these changes by modifying § 702.145, which describes the use of the special fund, to reflect the change in the employer's liability for special fund hearing loss claims. A new § 702.441 specifies that audiograms can be administered by qualified technicians, as long as they are certified by a audiologist or otolaryngologist who, the regulations state, must be certified by an generally accepted professional hearing program. This clarification is based on the Conference Manager's Statement.

It should be noted that hearing loss claims have different notice and claims filing requirements than other occupational diseases. First, Congress amended section 8(c)(13) to provide that the time for filing a notice of injury or claim

> shall not begin to run * * * until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

The Department has interpreted this amendment to mean that once the audiogram and report have been received, the employee is subject to the thirty (30) day and one (1) year filing requirements set forth in sections 12(a) and 13(a) of the Act, respectively, and not to the extended time requirements applicable to occupational diseases that do not immediately result in disability or death, since a hearing loss could entitle an employee immediately to a schedule award of compensation.

Employee Reports of Earnings

Under the 1984 amendments, employers are for the first time authorized to require employees receiving compensation to submit a statement of earnings semi-annually. The regulations implementing the provisions of the newly enacted section 8(j) are set forth at §§ 702.285 and 702.286. The provisions specify "earnings" which must be reported.

These include earnings from self-employment, even if the business operates at a loss. Failure to file a required report or the filing of an incomplete or inaccurate report may result in forfeiture of compensation. This statutory provision is repeated in the regulations.

The regulations also provide that the Director, OWCP, may require the filing of reports by employees receiving benefits from the special fund. This clarifies procedures which have been in effect for some time.

Micellaneous Provisions

Designated Official

Prior to the amendments, the Act required the employee to notify an employer of an injury by giving notice to a partner, an authorized agent of a corporation or the person in charge of the business. Employers were also required to keep records of all injuries and to send reports to the deputy commissioner.

The amendments require the employer to designate an official to whom notice must be given; that individual must be a first line supervisor, local plant manager or personnel office official at the place of employment. The amendments require the employer to notify the deputy commissioner of the selection.

In implementing this requirement, the regulations (at § 702.211) suggest types of first line supervisory positions (foreman, hatchboss or timekeeper) who are commonly those to whom notice is now given. The selection procedure is self implementing. It calls for a posting to ensure that all employees are aware of the designated official. That posting fulfills the requirement in the amendments that the employer notify the deputy commissioner.

Retired employees may not frequent the facility or indeed may live far away, and therefore may not be able to learn of the designated official. The regulations, therefore, provide that they may give notice to any other individuals listed in the statute (partner, officer or person in charge of a facility).

No Lost Time Cases

Prior to the 1984 amendments, the Act required that reports of all injuries be forwarded to the deputy commissioner and that the employer maintain record of injuries. The amendments eliminate the requirement for submitting notice in cases where the employee loses less than one work-shift but still require the employer to maintain a record of the injury. The regulations reflect this change (§ 702.201) and specify the type of record which must be maintained, listing the minimum information required for proper handling of any claim. The record keeping requirement in § 702.111 is changed to specify that records must be maintained for three years. This period is consistent with the Department's own retention schedule for such records as well as the retention requirements of FLSA and OSHA injury reports.

Penalties

The Act provided penalties for filing false information by an employee (section 31(c)), failure to file notices (section 30(e)), failure to secure coverage (section 38), and for discriminating against employees who make a claim under the Act (section 49). The penalties included fines for civil violations and fines and imprisonment for criminal violations.

The amendments generally increase the penalty provisions, add a "willing and knowing" requirement, and also extend the penalty for filing false or misleading information in connection with a claim to the employer/carrier. In addition, the penalty for discrimination against an employee who files a claim or testifies in a Longshore proceeding is not applicable where that employee has been found guilty of filing false information or misrepresenting a claim.

The regulations have been modified to reflect these increased penalties and other changes in the amendments. See § 702.204 (failure to furnish notice); § 702.271 (discrimination). New § 702.217, for the first time, describes the penalties for filing false or misleading statements. Also, for the first time the penalty for failure to secure coverage under the Act is described, in § 703.003.

Miscellaneous

Other changes in the rules include:

—Modifying § 703.108 (Period of authority to write insurance) to reflect procedural changes recently implemented. Reauthorization of carriers is now automatic and need not be sought every year.

—Clarifying the information which may be required of an authorized carrier (§ 703.302) or employer/carrier for purposes of the special fund assessment (§ 702.147). This is in accord with existing policy found necessary to ensure the integrity of the authorization and assessment processes.

—Altering the wording in § 702.162 (Liens on compensation) to reflect the change in the amendments directing that the Secretary shall (formerly this was discretionary) authorize a lien in favor of a union trust which pays disability benefits to an employee who is legally obligated to repay.

Publication as an Interim Regulation

The Department has determined that the public interest requires the immediate issuance of regulations in order to assure a smooth implementation of the amended Longshore Act. More specifically, Congress provided that many of the amendments would be effective as of September 28, 1984, while others would be effective ninety days later and that such amendments would apply to pending as well as new claims. The Act requires the Secretary to issue implementing regulations. It is essential, therefore, that these regulations become effective immediately in order to ensure compliance with the statute and to expedite the adjudication of claims that are subject to the 1984 amendments to the Longshore Act.

Additionally, the Act directs the Secretary, in accordance with regulations, to issue certificates of exemption to facilities qualified under section 3(d) and to publish lists of physicians, health care providers, and claimant representatives who have been disqualified from participation in the Longshore program in accordance with published rules and regulations. The failure to issue interim rules could result, for example, in the denial of the exemption to qualified employers and could lead to continued fraudulent activities now proscribed by the statute.

Accordingly, the Department finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that prior notice and public comment are contrary to the public interest. However, interested members of the public are invited to submit written comments within sixty (60) days of publication of these interim final regulations. After the comments are evaluated, these rules will be republished with modifications found appropriate as a result of the comments received and any additional analysis undertaken by the Department.

This interim regulation will be effective only until October 1, 1985, unless extended by appropriate Federal Register notice.

Effective Date

Because immediate issuance of this interim regulation is required by the public interest in having a smooth implementation of the Longshore Act amendments, it shall become effective immediately instead of thirty days after publication. This determination is made pursuant to 5 U.S.C. 553(d)(3).

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 1215–0160.

Classification—Executive Order 12291

These interim final rules only implement the amendments to the Longshore Act and make certain technical corrections to the regulations as previously promulgated. They do not, in themselves, impose any additional requirements. Therefore, this is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the amendments are only implementing the 1984 amendments to the Longshore Act and they do not, in themselves, impose any additional requirements upon small entities.

On the contrary, these regulations implement those amendments which exclude many small entities from coverage under the Longshore Act, establish procedures whereby some small entities may seek an exemption from the statute, and eliminate the reporting requirements for all employers in cases of no lost time injuries. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 701

Longshoremen, Workers' compensation.

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' compensation.

20 CFR Part 703

Insurance, Longshoremen, Workers' compensation.

Accordingly, 20 CFR parts 701, 702 and 703 are amended as set forth below.

1. The citation of authorities for Parts 701, 702 and 703, are revised to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 83 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171, et seq.; Secretary's Order 6–84, 49 FR 32473; Employment Standards Order 78–1, 43 FR 51469.

PART 701—GENERAL; ADMINISTERING AGENCY DEFINITIONS AND USE OF TERMS

2. Section 701.101 is revised to read as follows:

Rules in This Subchapter

§ 701.101 Scope of this subchapter and Subchapter B.

(a) This subchapter contains the regulations governing the administration of the Longshore and Harbor Workers' Compensation Act (LHWCA) and its direct extensions, the Defense Base Act (DBA), the Outer Continental Shelf Lands Act (OCSLA), and the Nonappropriated Fund Instrumentalities Act (NFLA), and such other amendments and extensions as may hereinafter be enacted.

(b) The regulations also apply to claims filed under the District of Columbia Workmen's Compensation Act (DCCA). That law applies to injuries or deaths sustained prior to July 26, 1982, the effective date of the District of Columbia Workers' Compensation Act.

(c) The regulations governing administration of the Black Lung Benefits Program are in Subchapter B of this chapter.

3. Section 701.201 and the center heading preceding it are revised to read as follows:

Office of Workers' Compensation Programs

§701.201 Establishment of Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him or her by the Secretary of Labor in Secretary's Order No 6–84, 49 FR 32473, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP). The Assistant Secretary further designated as the head thereof a Director, who shall administer the programs assigned to that office by the Assistant Secretary. By Secretary's order 81–1, the position of Deputy Under Secretary for Employment Standards was established to replace the position of Assistant Secretary for Employment Standards and all authority previously transferred to that position was transferred to the Deputy Under Secretary.

4. The introductory text and paragraphs (a) and (f) of § 701.202 are revised to read as follows:

§ 701.202 Transfer of functions.

Pursuant to the authority vested in him or her by the Secretary of Labor (which was by Secretary's order 81–1 transferred to the position of Deputy Under Secretary for Employment Standards), the Assistant Secretary for Employment Standards transferred from the Bureau of Employees' Compensation to the Office of Workers' Compensation Programs all functions of the Department of Labor with respect to the administration of benefits programs under the following statutes:

(a) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 et seq.;

* * * * *

(f) Title IV of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901 et seq.

§ 701.301 [Amended]

5. In § 701.301, paragraph (a)(4) is removed and reserved.

6. Section 701.301(a)(12) is revised to read as follows:

Terms Used in This Subchapter

§ 701.301 Definitions and use of terms.

(a) * * *

(12)(i) "Employee" means any person engaged in maritime employment, including:

(A) Any longshore worker or other person engaged in longshoring operations;

(B) Any harbor worker, including a ship repairer, shipbuilder and shipbreaker;

(C) Any other individual to whom an injury may be the basis for a compensation claim under the LHWCA as amended, or any of its extensions;

(ii) The term does not include:

(A) A master or member of a crew of any vessel;

(B) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net.

(iii) Nor does this term include the following individuals where it is first determined that they are covered by a state workers' compensation act:

(A) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(B) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (including recreational scuba diving and any commerical rafting or canoeing expeditions upon the navigable waters of the United States), restaurant, museum or retail outlet, whether or not over the navigable waters of the United States;

(C) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(D) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

(E) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other acquatic species;

(F) Individuals engaged in the building, repairing or dismantling of recreational vessels under 65 feet in length. For purposes of this subparagraph "length" means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement shall be from end to end over the deck, excluding sheer.

7. In Part 701, a new center heading and § 701.401 are added to read as follows:

Coverage Under State Compensation Programs

§ 701.401 Coverage under state compensation programs.

(a) Exclusions from the definition of "employee" under § 701.301(a)(12), and the employees of small vessel facilities otherwise covered which are exempted from coverage under § 702.171, are dependent upon coverage under a state workers' compensation program. For these purposes, a worker or dependent must first claim compensation under the appropriate state program and receive a final decision on the merits of the claim, denying coverage, before any claim may be filed under this Act.

(b) The intent of the Act is that state law will apply to those categories of employees if it otherwise would. Accordingly, not withstanding any contrary state law, claims by any of the categories of workers excluded under § 701.301 or 702.171 must be made to and processed by the state and a merit decision denying coverage on jurisdictional grounds must be made before coverage or benefits under the Act may be sought.

(c) The time for filing notice and claim under the Act (see Subpart B of Part 702) does not begin to run for purposes of claims by those workers or dependents described in § 701.301(a)(12) and § 702.171, until a final adverse decision denying coverage under a state compensation act is received.

PART 702—ADMINISTRATION AND PROCEDURE

7a. The table of contents for Part 702 is revised to read as follows:

Subpart A—General Provisions

Administration

Sec.
702.101 Establishment of compensation districts.
702.102 Establishment of suboffices and jurisdictional areas.
702.103 Effect of establishment of suboffices and jurisdictional areas.
702.104 Transfer of individual case file.

Records

702.111 Employer's records.
702.112 Records of the OWCP.
702.113 Inspection of records of the OWCP.
702.114 Copying of records of OWCP.

Forms

702.121 Forms.

Representation

702.131 Representation of parties in interest.
702.132 Fees for services.
702.133 Unapproved fees; solicitation of claimants; penalties.
702.134 Payment of claimant's attorney's fees in disputed claims.
702.135 Payment of claimant's witness fees and mileage in disputed claims.

Information and Assistance for Claimants

702.136 Requests for information and assistance.

Commutation of Payments and Special Fund

702.142 Commutation of payments; aliens not residents or about to become nonresidents.
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8. In § 702.111 a new sentence and OMB control number are added after the last sentence to read as follows:

§ 702.111 Employer's records.

* * * * *

Records required by this section shall be retained by the employer for three years following the date of injury; this applies to records for lost-time and no-lost-time injuries.

(Approved by the Office of Management and Budget under control number 1215-0160.)

9. In § 702.131, designate the existing paragraph as paragraph (a) and add the following paragraphs (b) and (c):

§ 702.131 Representation of parties in interest.

* * * * *

(b) The Secretary shall annually publish a list of individuals who are disqualified from representing claimants under the Act. Individuals on this list are not authorized to represent claimants under the Act subject to the provision of section 31(b)(2)(C) of the Act, 33 U.S.C. 931(b)(2)(C), and they shall not have their representation fee approved as provided in section 28(e), 33 U.S.C. 928(e).

(c) Individuals shall be included on the list mentioned in (b) if the Secretary determines, after proceedings under §§ 702.432(b) through 702.434, that such individual:

(1) Has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this Act or any workers' compensation statute;

(2) Has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

(3) Has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this section; or

(4) Has accepted fees for representing claimants under the Act which were not approved, or which were in excess of the amount approved pursuant to section 28 of the Act, 33 U.S.C. 928.

10. § 702.132 is revised to read as follows:

§ 702.132 Fees for services.

(a) Any person seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the deputy commissioner, administrative law judge, Board, or court, as the case may be, before whom the services were performed (See 33 U.S.C. 928(c)). The application shall be filed and serviced upon the other parties within the time limits specified by such deputy commissioner, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. No contract pertaining to the amount of a fee shall be recognized.

(b) No fee shall be approved for a representative whose name appears on the Secretary's list of disqualified representatives under § 702.131(b).

(c) Where fees are included in a settlement agreement submitted under § 702.241, et seq. approval of that agreement shall be deemed approval of attorney fees for purposes of this subsection for work performed before the Administrative Law Judge or deputy commissioner approving the settlement.

§ 702.141 [Removed]

11. § 702.141 is removed.

§ 702.142 [Amended]

12. 20 CFR § 702.142 is amended by removing the word "wife" wherever it appears and inserting in its place the word "spouse".

13. § 702.145(b) is revised to read as follows:

§ 702.145 Use of the special fund.

* * * * *

(b) Under section 8(f) of the Act (Second Injuries), In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of injury. If, following an injury falling within the provisions of section 8(c)(1)–(20), the employee with the pre-existing permanent partial disability becomes permanently and totally disabled after the second injury, but such total disability is found not to be due solely to his second injury, the employer (or carrier) shall be liable for compensation as provided by the provisions of section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20) or for 104 weeks, whichever is greater. However, if the injury is a loss of hearing covered by section 8(c)(13), 33 U.S.C. 908(c)(13), the liability shall be the lesser of these periods. In all other cases of a second injury causing permanent total disability (or death), wherein it is found that such disability (or death) is not due solely to the second injury, and wherein the employee had a pre-existing permanent partial disability, the employer (or carrier) shall first pay compensation under section 8 (b) or (e) of the Act, 33 U.S.C. 908 (b) or (e), if any is payable thereunder, and shall then pay 104 weeks compensation for such total disability or death, and none otherwise. If the second injury results in permanent partial disability, and if such disability is compensable under section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20), but the disability so compensable did not result solely from such second injury, and the disability so compensable is materially and substantially greater than that which would have resulted from the second injury alone, then the employer (or carrier) shall only be liable for the amount of compensation provided for in section 8(c)(1)–(20) that is attributable to such second injury, or for 104 weeks, whichever is greater. In all other cases wherein the employee is permanently and partially disabled following a second injury, and wherein such disability is not attributable solely to that second injury, and wherein such disability is materially and substantially greater than that which would have resulted from the second injury alone, and wherein such disability following the second injury is not compensable under section 8(c)(1)–(20) of the Act, then the employer (or carrier) shall be liable for such compensation as may be appropriate under section 8 (b) or (e) of the Act, 33 U.S.C. 908 (b) or (e), if any, to be followed by a payment of compensation for 104 weeks, and none other. The term "compensation" herein means money benefits only, and does not include medical benefits. The procedure for determining the extent of the employer's (or carrier's) liability under this paragraph shall be as provided for in the adjudication of claims in Subpart C of this Part 702. Thereafter, upon cessation of payments which the employer is requred to make under this paragraph, if any additional compensation is payable in the case, the deputy commissioner shall forward such case to the Director for consideration of an award to the person or persons entitled thereto out of the special fund. Any such award from the special fund shall be by order of the Director or Acting Director.

* * * * *

14. In § 702.146 paragraph (a) and (c) are revised to read as follows:

§ 702.146 Source of the special fund.

(a) All amounts collected as fines and penalties under the several provisions of the Act shall be paid into the special fund (33 U.S.C. 44(c)(3)).

* * * * *

(c) The Director annually shall assess an amount against insurance carriers and self-insured employers authorized under the Act and Part 703 of this subchapter to replenish the fund. That total amount to be charged all carriers and self-insurers to be assessed shall be based upon an estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and self-insurer shall be based upon (1) the ratio of the amount each paid during the prior calendar year for compensation and medical benefits, in relation to the amount all such carriers of self-insurers paid during that period for compensation and medical benefits, and (2) the ratio of the amount of payments made by the special fund for all cases being paid under section 8(f) of the Act, 33 U.S.C. 908(f), during the preceding calendar year which are attributable to the carrier or self-insurer in relation to the total of such payments during such year attributable to all carriers and self-insurers. The resulting sum of the percentages from paragraphs (c) (1) and (2) of this section will be divided by two, and the resulting percentage multiplied by the probable expenses of the fund. The Director may, in his or her discretion, condition continuance or renewal of authorization under Part 703 upon prompt payment of the assessment. However, no action suspending or revoking such authorization shall be taken without affording such carrier or self-insurer a hearing before the Director or his/her designee.

15. § 702.147 is amended by revising paragraph (a) and adding a new paragraph (c) and OMB control number to read as follows:

§ 702.147 Enforcement of special fund provisions.

(a) As provided in section 44(d)(1) of the Act, 33 U.S.C. 944(d)(1), for the purpose of making rules, regulations, and determinations under the special fund provisions in section 44 and for providing enforcement thereof, the Director may investigate and gather appropriate data from each carrier and self-insured employer, and may enter and inspect such places and records (and make such transcriptions of records), question such employees, and investigate such facts, conditions, practices, or other matters as he may deem necessary or appropriate. The Director may require the employer to have audits performed of claims activity relating to this Act. The Director may also require detailed reports of payments made under the Act, and of estimated future liabilities under the Act, from any or all carriers of self-insurers. The Director may require that such reports be certified and verified in whatever manner is considered appropriate.

* * * * *

(c) Civil penalties and unpaid assessments shall be collected by civil suits brought by and in the name of the Secretary.

(Approved by the Office of Management and Budget under control number 1215-0160.)

16. In § 702.148 the existing paragraph is designated as paragraph (a) and paragraphs (b) and (c) are added to read as follows:

§ 702.148 Insurance carriers' and self-insured employers' responsibilities.

(a) * * *

(b) Consistent with their greater direct liability stemming from the amended assessment formula, employers and insurance carriers are given the authority to monitor their claims in the special fund as outlined in paragraph (c) of this section. For purposes of monitoring these claims, employers and insurance carriers remain parties in interest to the claim and are allowed access to all records relating to the claim. Similarly, employers and insurance carriers can initiate proceeding to modify an award of compensation after the special fund has assumed the liability to pay benefits. It is intended that employers and insurance carriers have neither a greater nor a lesser responsibility in this new role that they not have with regard to cases that remain their sole liability. (See § 702.373(d).)

(c) An employer or insurance carrier may conduct any reasonable investigation regarding cases placed into the special fund by the employer or insurance carrier. Such investigation may include, but shall not be limited to, a semi-annual request for earnings information pursuant to section 8(j) of the Act, 33 U.S.C. 908(j) (See § 702.285) periodic medical examinations, vocational rehabilitation evaluations, and requests for any additional information needed to effectively monitor such a case.

17. Section 702.161 is revised to read as follows:

§ 702.161 Liens against assets of insurance carriers and employers.

Where payments have been made from the special fund pursuant to section 18(b) of the Act, 33 U.S.C. 918(b) and § 704.145(f) the Secretary of Labor shall, for the benefit of the fund, be subrogated to all the rights of the person receiving such payments. The Secretary may institute proceedings under either section 18 or 21(d) of the Act, 33 U.S.C. 918 or 921(d), or both, to recover the amount expended by the fund or so much as in the judgement of the Secretary is possible, or the Secretary may settle or compromise any such claim.

18. 20 CFR 702.162(a), (f), (h)–(j) are revised and an OMB control number is added to the section to read as follows:

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 179(b) of the Act, 33 U.S.C. 917(b), when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) [LMRA], established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien shall be authorized on such compensation in favor of the trust fund for the amount of such payments.

* * * * *

(f) If the administrative law judge issues a compensation order in favor of the claimant, such order shall establish a lien in favor of the trust fund if it is determined that the trust fund has satisfied all of the requirements of the Act and regulations.

* * * * *

(h) In the event that either the deputy commissioner or the administrative law judge is not satisfied that the trust fund qualifies for a lien under section 17(b), the deputy commissioner or administrative law judge may require further evidence including but not limited to the production of the collective bargaining agreement, trust agreement or portions thereof.

(i) Before any such lien is approved, if the trust fund has provided continued disability payments after the application for a lien has been filed, the trust fund shall submit a further certified statement showing the total amount paid to the claimant as disability payments. The claimant shall likewise be given an

opportunity to contest the amount alleged in this subsequent statement.

(j) In approving a lien on compensation, the deputy commissioner or administrative law judge shall not order an initial payment to the trust fund in excess of the amount of the past due compensation. The remaining amount to which the trust fund is entitled shall thereafter be deducted from the affected employee's subsequent compensation payments and paid to the trust fund, but any such payment to the trust fund shall not exceed 10 percent of the claimant-employee's bi-weekly compensation payments.

(Approved by the Office of Management and Budget under control number 1215-0160.)

19. In Part 702, new center heading and §§ 702.171 through 702.175 are added to subpart A to read as follows:

Certification of Exemption

§ 702.171 Certification of exemption, general.

An employer may apply to the Director or his/her designee to certify a particular facility as one engaged in the building, repairing or dismantling of exclusively small vessels, as defined. Once certified, injuries sustained at that facility would not be covered under the Act except for injuries which occur over the navigable waters of the United States including any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels. A facility otherwise covered under the Act remains covered until certification of exemption is issued; a certification will be granted only upon submission of a complete application (described in § 702.174), and only for as long as a facility meets the requirements detailed in section 3(d) of the Act, 33 U.S.C. 903(d). This exemption from coverage is not intended to be used by employers whose facilities from time to time may temporarily meet the criteria for qualification but only for facilities which work on exclusively small vessels, as defined.

§ 702.172 Certification; definitions.

For purposes of §§ 702.171 through 702.175 dealing with certification of small vessel facilities, the following definitions are applicable.

(a)(1) "Small vessel" means only those vessels described in section 3(d)(3) of the Act, 33 U.S.C. 903(d)(3), that is:

(i) A commercial barge which is under 900 lightship displacement tons (long); or

(ii) A commercial tugboat, towboat, crewboat, supply boat, fishing vessel or other work vessel which is under 1,600 tons gross.

(2) For these purposes: (i) One gross ton equals 100 cubic feet, as measured by the current formula contained in the Act of May 6, 1984 as amended through 1974 (46 U.S.C. 77); (ii) one long ton equals 2,240 lbs; and (iii) "Commercial" as it applies to "vessel" means any vessel engaged in commerce but does not include among other types military supply boats, patrol boats, utility vessels, ferries, Corps of Engineers dredges, pressure barges or Coast Guard vessels.

(b) "Federal Maritime Subsidy" means the construction differential subsidy (CDS) or operating differential subsidy under the Merchant Marine Act of 1936 (46 U.S.C. 1101 et seq.).

(c) "facility" means an operation of an employer at a particular contiguous geographic location.

§ 702.173 Exemptions; requirements, limitations.

(a) Injuries at a facility otherwise covered by the Act are exempted only upon certification that the facility is: (1) Engaged in the building, repairing or dismantling of exclusively small commercial vessels; and (2) does not receive a Federal maritime subsidy.

(b) The exemption does not apply to: (1) Injuries at any facility which occur over the navigable waters of the United States or upon any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels; or (2) where the employee at such facility is not subject to a state workers' compensation law.

§ 702.174 Exemptions; necessary information.

(a) *Application.* Before any facility is exempt from coverage under the Act, the facility must apply for and receive a certificate of exemption from the Director or his/her designee. The application must be made by the owner of the facility; where the owner is a partnership it shall be made by a partner and where a corporation by an officer of the corporation or the manager in charge of the facility for which an exemption is sought. The information submitted shall include the following:

(1) Name, location, physical description of the facility for which an exemption is sought.

(2) Description of the nature of the business.

(3) An affidavit (signed by a partner if the facility is owned by a partnership or an officer if owned by a corporation) verifying and/or acknowledging that:

(i) the facility is, as of the date of the application, engaged in the business of building, repairing or dismantling exclusively small commercial vessels and that it does not then nor foreseeably will it engage in the building, repairing or dismantling of other than small vessels.

(ii) The facility does not receive any Federal maritime subsidy.

(iii) The signator has the duty to immediately inform the deputy commissioner of any change in these or other conditions likely to result in a termination of an exemption.

(iv) the employer has secured appropriate compensation liability under a state workers' compensation law.

(v) Any false, relevant statements relating to the application or the failure to notify the deputy commissioner of any changes in circumstances likely to result in termination of the exemption will be grounds for revocation of the exemption certificate and will subject the employer to all provisions of the Act, including all duties, responsibilities and penalties, retroactive to the date of application or date of change in circumstances, as appropriate.

(b) *Action by the Director.* The Director or his/her designee shall review the application within thirty (30) days of its receipt.

(1) Where the application is complete and shows that all requirements under § 702.173 are met, the Director shall promptly notify the employer by certified mail, return receipt requested, that certification has been approved and will be effective on the date specified. The employer is required to post notice of the exemption at a conspicuous location.

(2) Where the application is incomplete or does not substantiate that all requirements of section 3(d) of the Act, 33 U.S.C. 903(d), have been met, or evidence shows the facility is not eligible for exemption, the Director shall issue a letter which details the reasons for the deficiency or the rejection. The employer/applicant may reapply for certification, correcting deficiencies and/or responding to the reasons for the Director's denial. The Director or his/her designee shall issue a new decision within a reasonable time of reapplication following denial. Such action will be the final administrative review and is not appealable to the Administrative Law Judge or the Benefits Review Board.

(c) The Director or another designated individual at any time has the right to enter on and inspect any facility seeking exemption for purposes of verifying information provided on the application form.

(d) *Action by the employer.* Immediately upon receipt of the

certificate of exemption from coverage under the Act the employer shall post:

(1) A general notice in a conspicuous place that the Act does not cover injuries sustained at the facility in question, the basis of the exemption, the effective date of the exemption and grounds for termination of the exemption.

(2) A notice, where applicable, along the entrances to all areas to which the exemption does not apply.

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.175 Effect of work on excluded vessels; reinstatement of certification.

(a) When a vessel other than a small commercial vessel, as defined in § 702.172, enters a facility which has been certified as exempt from coverage, the exemption shall automatically terminate as of the date such a vessel enters the facility. The exemption shall also terminate on the date a contract for a Federal maritime subsidy is entered into. All duties, obligations and requirements imposed by the Act, including the duty to secure compensation liability as required by sections 4 and 32 of the Act, 33 U.S.C. 904 and 932, and to keep records and forward reports, are effective immediately. The employer shall notify the Director or his/her designee immediately where this occurs.

(b) Where an exemption certification is terminated because of circumstances described in (a), the employer may apply for reinstatement of the exemption once the event resulting in termination of the exemption ends. The reapplication shall consist of a reaffirmation of the nature of the business, an explanation of the circumstances leading to the termination of exemption, and an affidavit by the appropriate person affirming that the circumstances prompting the termination no longer exists nor will they reoccur in the forseeable future and that the facility is engaged in building, repairing or dismantling exclusively small vessels. The Director or the Director's designee shall respond to the complete reapplication within ten working days of receipt.

20. In § 702.201, the existing paragraph is designated as paragraph (a) and the following new paragraph (b) and OMB control number are added to read as follows:

§ 702.201 Reports from employers of employee's injury or death.

* * * * *

(b) No report shall be filed unless the injury causes the employee to lose one or more shifts from work. However, the employer shall keep a record containing the information specified in § 702.202.

(Approved by the Office of Management and Budget under control number 1215-0160.)

21. Section 702.204 is revised to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and/or falsifying.

Any employer, insurance carrier, or self-insured employer who knowingly and willingly fails or refuses to send any report required by § 702.201, or who knowingly and willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement or misrepresentation.

§ 702.205 [Amended]

22. In § 702.205 is amended by deleting the reference to § 702.212 and replacing it with § 702.221.

23. The following redesignations and amendments are made to §§ 702.206 through 702.216:

a. Sections 702.212 through 702.216 are redesignated as §§ 702.221 through 702.225 respectively; new §§ 702.221 and 702.222 are revised to read as set forth below, and new § 702.223 is amended by revising the reference to "§ 702.212" to read "§ 702.221."

b. Section 702.211 is redesignated as new § 702.216 and revised to read as set forth below.

c. Sections 702.206 through 702.210 are redesignated as §§ 702.211 through 702.215 and new §§ 702.211, 702.212, and 702.215 are revised to read as set forth below.

d. A new § 702.217 is added to read as set forth below.

The revised and added sections described above read as follows:

Notice

§ 702.211 Notice of employee's injury or death; designation of responsible official.

(a) In order to claim compensation under the Act, an employee or claimant must first give notice of the fact of an injury or death to the employer and also may give notice to the deputy commissioner for the compensation district in which the injury or death occurred. Notice to the employer must be given to that individual whom the employer has designated to receive such notices. If no individual has been so designated notice may be given to: (1) The first line supervisor (including foreman, hatchboss or timekeeper), local plant manager or personnel office official; (2) to any partner if the employer is a partnership; or (3) if the employer is a corporation, to any authorized agent, to an officer or to the person in charge of the business at the place where the injury occurred. In the case of a retired employee, the employee/claimant may submit the notice to any of the above persons, whether or not the employer has designated an official to receive such notice.

(b) In order to facilitate the filing of notices, each employer shall designate an individual responsible for receiving notices of injury or death; this requirement applies to all employers. The designation shall be by position and the employer shall provide the name and/or position, exact location and telephone number of the individual to all employees by the appropriate method described below.

(1) *Type of individual.* Designees must be a first line supervisor (including a foreman, hatchboss or timekeeper), local plant manager or personnel office official who is located full-time on the premises of the covered facility. The employer must designate one individual at each place of employment or one individual for each work crew where there is no fixed place of employment (in that case, the designation should always be the same position for all work crews).

(2) *How designated.* The name and/or title, the location and telephone number of the individual who is selected by the employer to receive all notices shall be given to the deputy commissioner for the compensation district in which the facility is located; posting on the worksite in a conspicuous place shall fulfill this requirement. A redesignation shall be effected by a change in posting.

(3) *Publication.* Every employer shall post the name and/or position, the exact location and telephone number of the designated official. The posting shall be part of the general posting requirement, done on a form prescribed by the Director, and placed in a conspicuous location. Posting must be done at each worksite.

(4) *Effect of failure to designate.* Where an employer fails to properly designate and to properly publish the name and/or position of the individual authorized to receive notices of injury or death, failure of any employee/claimant to give timely notice shall not bar any claim for compensation.

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.212 Notice; when given; when given for certain occupational diseases.

(a) For other than occupational diseases described in (b), the employee must give notice within thirty (30) days

of the date of the injury or death. For this purpose the date of injury or death is:

(1) The day on which a traumatic injury occurs;

(2) The date on which the employee or claimant is or by the exercise of reasonable diligence or by reason of medical advice, should have been aware of a relationship between the injury or death and the employment; or

(3) In the case of claims for loss of hearing under section 8(c)(13) of the Act, 33 U.S.C. 908(c)(13), the date the employee receives an audiogram, with the accompanying report which indicates the employee has suffered a loss of hearing. (See § 702.441).

(b) In the case of an occupational disease which does not immediately result in disability or death, notice must be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice, should have been aware, of the relationship between the employment, the disease and the death or disability. For purposes of these occupational diseases, therefore, the notice period does not begin to run until the employee is disabled, or in the case of a retired employee, until a permanent impairment exists.

(c) For purposes of workers whose coverage under this Act is dependent on denial of coverage under a state compensation program, as described in § 701.401, the time limitations set forth above do not begin to run until a final decision denying state coverage is issued under the state compensation act.

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.215 Notice; how given.

Notice shall be effected by delivering it—by hand or by mail at the address posted by the employer—to the individual designated to receive such notices. Notice when given to the deputy commissioner, may be by hand or by mail on a form supplied by the Secretary, or orally in person or by telephone.

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.216 Effect of failure to give notice.

Failure to give timely notice to the employer's designated official shall not bar any claim for compensation if: (a) The employer, carrier, or designated official had actual knowledge of the injury or death; and (b) the deputy commissioner or ALJ determines the employer or carrier has not been prejudiced; or (c) the deputy commissioner excuses failure to file notice. For purposes of this subsection, actual knowledge shall be deemed to exist if the employee's immediate supervisor was aware of the injury and/or in the case of a hearing loss, where the employer has furnished to the employee an audiogram and report which indicates a loss of hearing. Failure to give notice shall be excused by the deputy commissioner if: a) notice, while not given to the designated official, was given to an official of the employer or carrier, and no prejudice resulted; or b) for some other satisfactory reason, notice could not be given. Failure to properly designate and post the individual so designated shall be considered a satisfactory reason. In any event, such defense to a claim must be raised by the employer/carrier at the first hearing on the claim.

§ 702.217 Penalty for false statement, misrepresentation.

(a) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.

(b) Any person including, but not limited to, an employer, its duly authorized agent or an employee of an insurance carrier, who knowingly and willingly makes a false statement or representation for the purpose of reducing, denying or terminating benefits to an injured employee, or his dependents pursuant to section 9, 33 U.S.C. 909, if the injury results in death, shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or both.

Claims

§ 702.221 Claims for compensation; time limitations.

(a) Claims for compensation for disability or death shall be in writing and filed with the deputy commissioner for the compensation district in which the injury or death occurred. Claims may be filed anytime after the seventh day of disability or anytime following the death of the employee. Except as provided below, the right to compensation is barred unless a claim is filed within one year of the injury or death, or (where payment is made without an award) within one year of the date on which the last compensation payment was made.

(b) In the case of a hearing loss claim, the time for filing a claim does not begin to run until the employee receives an audiogram with the accompanying report which indicates the employee has sustained a hearing loss. (See § 702.441).

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.222 Claims; exceptions to time limitations.

(a) Where a person entitled to compensation under the Act is mentally incompetent or a minor, the time limitation provision of § 702.221 shall not apply to a mentally incompetent person so long as such person has no guardian or other authorized representative, but § 702.221 shall be applicable from the date of appointment of such guardian or other representative. In the case of minor who has no guardian before he or she becomes of age, time begins to run from the date he or she becomes of age.

(b) Where a person brings a suit at law or in admiralty to recover damages in respect of an injury or death, or files a claim under a state workers' compensation act because such person is excluded from this Act's coverage by reason of section 2(3) or 3(d) of the Act (33 U.S.C. 902(3) or 903(d)), and recovery is denied because the person was an employee and defendant was an employer within the meaning of the Act, and such employer had secured compensation to such employee under the Act, the time limitation in § 702.221 shall not begin to run until the date of termination of such suit or proceeding.

(c) Notwithstanding the provisions in paragraph (a) of this section, where the claim is one based on disability or death due to an occupational disease which does not immediately result in death or disability, it must be filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice, should have been aware of the relationship between the employment, the disease and the death or disability, or within one year of the date of last payment of compensation, whichever is later. For purposes of occupational disease, therefore, the time limitation for filing a claim does not begin to run until the employee is disabled, or in the case of a retired employee, where a permanent impairment exists.

(d) The time limitations set forth above do not apply to claims filed under section 49 of the Act, 33 U.S.C. 949.

(Approved by the Office of Management and Budget under control number 1215-0160.)

24. Section 702.231 is revised to read as follows:

§ 702.231 Noncontroverted claims; payment of compensation without an award.

Unless the employer controverts its liability to pay compensation under this Act, the employer or insurance carrier shall pay periodically, promptly and directly to the person entitled thereto benefits prescribed by the Act. For this purpose, where the employer furnishes to an employee a copy of an audiogram with a report thereon, which indicates the employee has sustained a hearing loss causally related to factors of that employment, the employer or insurance carrier shall pay appropriate compensation or at that time controvert the liability to pay compensation under this Act.

25. Section 702.232 is revised to read as follows:

§ 702.232 Payments without an award; when; how paid.

The first installment of compensation shall become due by the fourteenth (14th) day after the employer has been notified, through the designated official or by any other means described in § 702.211 et seq., or has actual knowledge of the injury or death. All compensation due on that fourteenth (14th) day shall be paid then and appropriate compensation due thereafter must be paid in semi-monthly installments, unless the deputy commissioner determines otherwise.

§ 702.235 [Amended]

26. In § 702.235, paragraph (b)(3) is removed and paragraphs (4) and (5) are redesignated as (3) and (4), respectively.

27. By revising § 702.241 and § 702.242 to read as follows:

§ 702.241 Definitions and supplementary information.

(a) As used hereinafter, the term "adjudicator" shall mean deputy commissioner or administrative law judge (ALJ).

(b) If a settlement application is submitted to an adjudicator and the case is pending at the Office of Administrative Law Judges, the Benefits Review Board, or any Federal circuit court of appeals, the parties may request that the case be remanded to the adjudicator for consideration of the application. The thirty day period as described in paragraph (f) of this section begins when the remanded case is received by the adjudicator.

(c) If a settlement application is first submitted to an ALJ, the thirty day period mentioned in paragraph (f) of this section does not begin until five days before the date the formal hearing is set. Where a case is pending before the ALJ but not set for a hearing, the parties may request the case be remanded to the deputy commissioner for consideration of the settlement.

(d) A settlement agreement between parties represented by counsel, which is deemed approved when not disapproved within thirty days, as described in paragraph (f) of this section, shall be considered to have been filed in the office of the deputy commissioner on the thirtieth day for purposes of sections 14 and 21 of the Act, 33 U.S.C. 914 and 921.

(e) A fee for representation which is included in an agreement that is approved in the manner described in paragraph (d) of this section, shall also be considered approved within the meaning of section 28(e) of the Act, 33 U.S.C. 928(e).

(f) The thirty day period for consideration of a settlement agreement shall be calculated from the day after receipt unless the parties are advised otherwise by the adjudicator. (See § 702.243(b)). If the last day of this period is a holiday or occurs during a weekend, the next business day shall be considered the thirtieth day.

(g) An agreement among the parties to settle a claim is limited to the rights of the parties and to claims then in existence; settlement of disability compensation or medical benefits shall not be a settlement of survivor benefits nor shall the settlement affect, in any way, the right of survivors to file a claim for survivor's benefits.

(h) For purposes of this section and § 702.243 the term "counsel" means any attorney admitted to the bar of any state, territory or the District of Columbia.

§ 702.242 Information necessary for a complete settlement application.

(a) The settlement application shall be a self-sufficient document which can be evaluated without further reference to the administrative file. The application shall be in the form of a stipulation signed by all parties and shall contain a brief summary of the facts of the case to include: a description of the incident, a description of the nature of the injury to include the degree of impairment and/or disability, a description of the medical care rendered to date of settlement, and a summary of compensation paid and the compensation rate or, where benefits have not been paid, the claimant's average weekly wage.

(b) The settlement application shall contain the following:

(1) A full description of the terms of the settlement which clearly indicates, where appropriate, the amounts to be paid for compensation, medical benefits, survivor benefits and representative's fees which shall be itemized as required by § 702.132.

(2) The reason for the settlement, and the issues which are in dispute, if any.

(3) The claimant's date of birth and, in death claims, the names and birth dates of all dependents.

(4) Information on whether or not the claimant is working or is capable of working. This should include, but not be limited to, a description of the claimant's educational background and work history, as well as other factors which could impact, either favorably or unfavorably, on future employability.

(5) A current medical report which fully describes any injury related impairment as well as any unrelated conditions. This report shall indicate whether maximum medical improvement has been reached and whether further disability or medical treatment is anticipated. If the settlement is for medical benefits the medical report shall include an estimate of the claimant's need for future medical treatment. A medical report need not be submitted with agreements to settle survivor benefits unless the circumstances warrant it.

(6) A statement explaining how the settlement amount is considered adequate.

(7) If the settlement application covers medical benefits, an itemization of the amount paid for medical expenses by year for the three years prior to the date of the application. An estimate of the cost of future medical treatment shall also be submitted which indicates the inflation factor and/or the discount rate used, if any.

(8) Information on any collateral source available for the payment of medical expenses.

(Approved by the Office of Management and Budget under control number 1215–0160.)

28. In part 702, a new § 702.243 is added to read as follows:

§ 702.243 Settlement application; how submitted, how approved, how disapproved, criteria.

(a) When the parties to a claim for compensation, including survivor benefits and medical benefits, agree to a settlement they shall submit a complete application to the adjudicator. The application shall contain all the information outlined in § 702.242 and shall be sent by certified mail, return receipt requested, to the adjudicator. Failure to submit a complete application shall toll the thirty day period mentioned in section 8(i) of the Act, 33 U.S.C. 908(i), until a complete application is received by certified mail.

(b) The adjudicator shall consider the settlement application within thirty days and either approve or disapprove the application. The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator. However, if the parties are represented by counsel, the settlement shall be deemed approved unless specifically disapproved within thirty days after receipt of a complete application. This thirty day period does not begin until all the information described in § 702.242 has been submitted. The adjudicator shall examine the settlement application within thirty days and shall immediately serve by certified mail on all parties notice of any deficiency. This notice shall also indicate that the thirty day period will not commence until the deficiency is corrected.

(c) If the adjudicator disapproves a settlement application, the adjudicator shall serve on all parties a written statement or compensation order containing the reasons for disapproval. This statement shall be served by certified mail within thirty days of receipt of a complete application (as described in § 702.242) if the parties are represented by counsel. This disapproval may be appealed pursuant to sections 19 and 21 of the Act, 33 U.S.C. 919 and 921, or an amended application may be submitted to the adjudicator for reconsideration.

(d) The parties may submit a settlement application solely for compensation, or solely for medical benefits or for compensation and medical benefits combined.

(e) If either portion of a combined compensation and medical benefits settlement application is disapproved the entire application is disapproved unless the parties indicate on the face of the application that they agree to settle either portion independently.

(f) When presented with a settlement, the adjudicator shall review the application and determine whether, considering all of the circumstances, the amount is adequate. The criteria for determining the adequacy of the settlement application shall include, but not be limited to:

(1) The claimant's age, education and work history;

(2) The degree of the claimant's disability or impairment;

(3) The availability of the type of work the claimant can do;

(4) The probability of success if the case were to be formally litigated; and

(5) The cost and necessity of future medical treatment (where the settlement includes medical benefits).

(g) In cases being paid pursuant to a final compensation order, where no substantive issues are in dispute, a settlement amount which does not equal the present value of future compensation payments commuted, computed at five percent true discount compounded annually shall be considered inadequate unless the parties to the settlement show that the amount is adequate. The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Table, as developed by the United States Department of Health and Human Services, which shall be updated from time to time.

29. In § 702.271, paragraph (a) is revised to read as follows:

§ 702.271 Discrimination; against employees who bring proceedings, prohibition and penalty.

(a) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his/her employment because that employee: (1) has claimed or attempted to claim compensation under this Act; or (2) has testified or is about to testify in a proceeding under this Act; except that to discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1) is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than $1,000 or more than $5,000 to be paid (by the employer alone, and not by a carrier) to the deputy commissioner for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore that employee to his or her employment along with all wages lost due to the discrimination unless that employee has ceased to be qualified to perform the duties of the employment.

* * * * *

§ 702.281 [Amended]

30. Section 702.281 is amended by removing the last sentence ("Caution: see 33 U.S.C. 933(a)") and by adding a new paragraph (b) to read as follows:

(b) Where the claim or legal action instituted against a third party results in a settlement agreement which is for an amount less than the compensation to which a person would be entitled under this Act, the person (or the person's representative) must obtain the prior, written approval of the settlement from the employer and the employer's carrier before the settlement is executed. Failure to do so relieves the employer and/or carrier of liability for compensation described in section 33 of Act, 33 U.S.C. 933(f). The approval shall be on a form provided by the Director and filed, within thirty days after the settlement is entered into, with the deputy commissioner who has jurisdiction in the district where the injury occurred.

31. In Part 702, new §§ 702.285 and .286 are added to Subpart B to read as follows:

§ 702.285 Report of earnings.

(a) An employer, carrier or the Director (for those cases being paid from the Special Fund) may require an employee to whom it is paying compensation to submit a report on earnings from employment or self-employment. This report may not be required any more frequently than semi-annually. The report shall be made on a form prescribed by the Director and shall include all earnings from employment and self-employment and the periods for which the earnings apply. The employee must return the complete report on earnings even where he or she has no earnings to report.

(b) For these purposes the term "earnings" is defined as all monies received from any employment and includes but is not limited to wages, salaries, tips, sales commissions, fees for services provided, piecework and all revenue received from self-employment even if the business or enterprise operated at a loss of if the profits were reinvested.

(Approved by the Office of Management and Budget under control number 1215-0160.)

§ 702.286 Report of earnings; forfeiture of compensation.

(a) Any employee who fails to submit the report on earnings from employment or self-employment under § 702.285 or, who knowingly and willingly omits or understates any part of such earnings, shall upon a determination by the deputy commissioner forfeit all right to compensation with respect to any period during which the employee was required to file such a report. The employee must return the completed report on earnings (even where he or she reports no earnings) within thirty (30) days of the date of receipt; this period may be extended for good cause, by the deputy commissioner, in determining whether a violation of this requirement has occurred.

(b) Any employer or carrier who believes that a violation of paragraph (a) of this section has occurred may file a charge with the deputy commissioner. The allegation shall be accompanied by evidence which includes a copy of the report, with proof of service requesting the information from the employee and clearly stating the dates for which the employee was required to report income. Where the employer/carrier is alleging an omission or understatement of earnings, it shall, in addition, present evidence of earnings by the employee during that period, including copies of checks, affidavits from employers who paid the employee earnings, receipts of income from self-employment or any other evidence showing earnings not reported or underreported for the period in question. Where the deputy commissioner finds the evidence sufficient to support the charge he or she shall convene an informal conference as described in subpart C and shall issue a compensation order affiming or denying the charge and setting forth the amount of compensation for the specified period. If there is a conflict over any issue relating to this matter any party may request a formal hearing before an Administrative Law Judge as described in subpart C.

(c) Compensation forfeited under paragraph (b) of this section, if already paid, shall be recovered by a deduction from the compensation payable to the employee if any, on such schedule as determined by the deputy commissioner. The deputy commissioner's discretion in such cases extends only to rescheduling repayment by crediting future compensation and not to whether and in what amounts compensation is forfeited. For this purpose, the deputy commissioner shall consider the employee's essential expenses for living, income from whatever source, and assets, including cash, savings and checking accounts, stocks, bonds, and other securities.

32. Section 702.321 is added to Subpart C of Part 702 to read as follows:

§ 702.321 Procedures for determining applicability of Section 8(f) of the Act.

(a) *Application: filing, service, contents.* An employer or insurance carrier which seeks to invoke the provisions of section 8(f) of the Act, must request limitation of its liability, and file, in duplicate, with the deputy commissioner a fully documented application. The application shall specify with particularity the pre-existing condition relied upon as constituting an existing permanent partial disability. The application shall also state: (1) The reasons for believing that the claimant's permanent disability after the injury would be less were it not for the pre-existing permanent partial disability or that the death would not have ensued but for that disability; and (2) the basis for the assertion that the pre-existing disability relied upon was manifest to the employer before the employment injury. Documentary medical evidence relied upon in support of the request for section 8(f) relief shall also be submitted. This medical evidence shall include, but not be limited to, a current medical report establishing the extent of all impairments and the date of maximum medical improvement. If the current disability is less than total, the medical evidence must show that the disability is materially and substantially greater than that which would have resulted from the subsequent injury alone. If the injury is loss of hearing, the pre-existing hearing loss must be documented by an audiogram which complies with the requirements under § 702.441. Any additional evidence considered necessary by the Director shall also be submitted. If the claim is being paid by the special fund and the claimant dies, an employer need not reapply for section 8(f) relief. However, survivor benefits will not be paid until it has been established that the death was due to the accepted injury and the eligible survivors have been identified. The deputy commissioner will issue a compensation order once a claim for survivor benefits is filed and entitlement of the survivors to compensation has been verified. Since the employer remains a party in interest to the claim a compensation order will not be issued without the agreement of the employer.

(b) *Application: Time for filing.* A request for section 8(f) relief must be made on or before whichever of the following occurs first: (1) The date of the informal conference where the permanency of the claimant's condition is to be considered, or (2) the date when benefits are first paid for permanent disability. When the request for section 8(f) relief is made, an application for such relief, together with all the evidence described in paragraph (a), must be submitted, in duplicate, to the deputy commissioner within ninety (90) days. This period may be extended by the deputy commissioner for good cause. However, this extension may not continue beyond the date of the informal conference where section 8(f) relief or the permanency of the claimant's condition is to be considered. The failure to submit a fully documented application by the date of that informal conference shall be an absolute defense to the liability of the special fund. The failure of an employer to submit a complete and timely application in support of a request for section 8(f) relief shall not prevent the deputy commissioner, at his or her discretion, from considering the claim for compensation and transmitting the case for formal hearing. However, such failure shall be an absolute defense to the special fund's liability for the payment of benefits in connection with such claim. The failure of an employer to present a timely request for relief under section 8(f) of the Act may be excused only where the employer could not have reasonably anticipated the liability of the Special Fund prior to the issuance of a compensation order. Relief under section 8(f) is not available to an employer who fails to comply with section 32(a) of the Act, 33 U.S.C. 932(a).

(c) *Application: Approval, disapproval.* If all the evidence required by paragraph (a) was submitted with the application for section 8(f) relief and the facts warrant relief under this section, the deputy commissioner shall award such relief after concurrence by the Associate Director, DLHWC. If the deputy commissioner or the Associate Director finds that the facts do not warrant relief under section 8(f) the deputy commissioner shall advise the employer of the grounds for the denial. The application for section 8(f) relief may then be considered by an administrative law judge. When a case is transmitted to the Office of Administrative Law Judges the deputy commissioner shall indicate whether the 1984 amendment to this section of the Act applies to the case and whether the application for section 8(f) was properly presented to the deputy commissioner for consideration. The deputy commissioner shall also attach a copy of the application for section 8(f) relief submitted by the employer, and notwithstanding § 702.317(c), the deputy commissioner's denial of the application.

(Approved by the Office of Management and Budget under control number 1215-0160.)

33. In § 702.373 paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 702.373 Modification of awards.

(a) Upon his/her own initiative, or upon application of any party in interest (including an employer or carrier which has been granted relief under section 8(f) of the Act, 33 U.S.C. 908(f)), the deputy commissioner may review any compensation case (including a case under which payments are made

pursuant to section 44(i) of the Act, 33 U.S.C. 944(i)) in accordance with the procedure in Subpart C of this part, and after such review of the case under § 702.315, or review at formal hearings under the regulations governing formal hearings in Subpart C of this part, file a new compensation order terminating, continuing, reinstating, increasing or decreasing such compensation, or awarding compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made retroactive from the date of injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner or the administrative law judge. Settlements cannot be modified.

* * * * *

(d) If the investigation, described in § 702.148(c), discloses a change in conditions and the employer or insurance carrier intends to pursue modification of the award of compensation the deputy commissioner and claimant shall be notified through an informal conference. At the conclusion of the informal conference the deputy commissioner shall issue a recommendation either for or against the modification. This recommendation shall also be sent to the Associate Director, Division of Longshoremen's and Harbor Workers' Compensation (DLHWC) for a determination on whether or not to participate in the modification proceeding on behalf of the special fund. Lack of concurrence of the Associate Director, DLHWC or lack of participation by a representative of the special fund shall not be a bar to the modification proceeding.

34. In § 702.401 the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 702.401 Medical care defined.

* * * * *

(b) An employee may rely on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by an accredited practitioner of such recognized church or religious denomination, and nursing services rendered in accordance with such tenets and practice without loss or diminution of compensation or benefits under the Act. For purposes of this section, a recognized church or religious denomination shall be any religious organization: (1) That is recognized by the Social Security Administration for purposes of reimbursements for treatment under Medicare and Medicaid or (2) that is recognized by the Internal Revenue Service for purposes of tax exempt status.

35. Section 702.402 is revised to read as follows:

§ 702.402 Employer's duty to furnish; duration.

It is the duty of the employer to furnish appropriate medical care (as defined in § 702.401(a)) for the employee's injury, and for such period as the nature of the injury or the process of recovery may require.

36. Section 702.403 is revised to read as follows:

§ 702.403 Employee's right to choose physician; limitations.

The employee shall have the right to choose his/her attending physician from among those authorized by the Director, OWCP, to furnish such care and treatment, except those physicians included on the Secretary's list of debarred physicians. In determining the choice of a physician, consideration must be given to availability, the employee's condition and the method and means of transportation. Generally 25 miles from the place of injury, or the employee's home is a reasonable distance to travel, but other pertinent factors must also be taken into consideration.

37. In § 702.405, a new sentence is added at the end of the existing paragraph to read as follows:

§ 702.405 Selection of physician; emergencies.

* * * The Director will direct reimbursement of medical claims for services rendered by physicians or health care providers who are on the list of those excluded from providing care under the Act, if such services were rendered in an emergency. (See §§ 702.417 and 702.435(b)).

38. In § 702.406, the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 702.406 Change of physicians, non-emergencies.

* * * * *

(b) The deputy commissioner for the appropriate compensation district may order a change of physicians or hospitals when such a change is found to be necessary or desirable or where the fees charged exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges.

39. In § 702.407, paragraph (b) is revised to read as follows:

§ 702.407 Supervision of medical care.

* * * * *

(b) The determination of the necessity, character and sufficiency of any medical care furnished or to be furnished the employee, including whether the charges made by any medical care provider exceed those permitted under the Act;

* * * * *

40. In § 702.410 paragraphs (b) and (c) are revised to read as follows:

§ 702.410 Duties of employees with respect to special examinations.

* * * * *

(b) Where an employee fails to submit to an examination required by §§ 702.408 and 702.409, the deputy commissioner or administrative law judge may order that no compensation otherwise payable shall be paid for any period during which the employee refuses to submit to such examination unless circumstances justified the refusal.

(c) Where an employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the deputy commissioner may by order suspend the payment of further compensation during such time as the refusal continues. Except that refusal to submit to medical treatment because of adherence to the tenets of a recognized church or religious denomination as described in § 702.401(b) shall not cause the suspension of compensation.

41. Section 702.413 is revised to read as follows:

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. The opinion of an agency medical director that a charge by a medical care provider disputed under the provisions of § 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient

evidence to warrant further proceedings pursuant to § 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

42. Section 702.414 is revised to read as follows:

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing, community charges for similar treatment, services or supplies or the provider's customary charges. Such investigation shall initially be conducted informally through contact of the medical care provider by the district medical director. If this informal investigation is unsuccessful further proceedings shall be undertaken. These proceedings shall include, but not be limited to: An informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(b) The failure of any medical care provider to present any evidence required by the Director pursuant to this section without good cause shall not prevent the Director from making findings of fact.

(c) After any proceeding under this section the Director shall make specific findings of fact and provide notice of these findings to the affected parties.

(d) The Director may suspend any such proceedings if after receipt of the written complaint the affected parties agree to withdraw the controversy from agency consideration on the basis that such controversy has been resolved by the affected parties. Such suspension, however, shall be at the discretion of the Director.

43. Section 702.415 is revised to read as follows:

§ 702.415 Fees for medical services; unresolved disputes on charges; procedure.

After issuance of specific findings of fact and proposed action by the Director as provided in § 702.414 any affected provider has the right to seek a hearing pursuant to section 556 of Title 5, United States Code. Upon written request for such a hearing, the matter shall be referred by the Deputy Commissioner to the OALJ for formal hearing in accordance with the procedures in subpart C of this part. If no such request for a hearing is filed with the deputy commissioner within thirty (30) days the findings issued pursuant to § 702.414 shall be final.

44. Section 702.417 is revised to read as follows:

§ 702.417 Fees for medical services; disputes; effect of adverse decision.

If the final decision and order upholds the finding of the Director that the fee or charge in dispute was not in accordance with prevailing community charges or the provider's customary charges, the person claiming such fee or cost charge shall be given thirty (30) days after filing of such decision and order to make the necessary adjustment. If such person still refuses to make the required readjustment, such person shall not be authorized to conduct any further treatments or examinations (if a physician) or to provide any other services or supplies (if by other than a physician). Any fee or cost charge subsequently incurred for services performed or supplies furnished shall not be a reimbursable medical expense under this subpart. This prohibition shall apply notwithstanding the fact that the services performed or supplies furnished were in all other respects necessary and appropriate within the provision of these regulations. However, the Director may direct reimbursement of medical claims for services rendered if such services were rendered in an emergency (see § 702.435(b)). At the termination of the proceedings provided for in this section the deputy commissioner shall determine whether further proceedings under § 702.432 should be initiated.

45. In § 702.418 the existing paragraph is designated as paragraph (a) and a new paragraph (b) and OMB control number are added to read as follows:

§ 702.418 Procedure for requesting medical care; employee's duty to notify employer.

* * * * *

(b) In the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. Notice shall be given: (1) To the deputy commissioner in the compensation district in which the injury or death occurred, and (2) to the employer.

(Approved by the Office of Management and Budget under control number 1215-0160.)

46. Section 702.419 is revised to read as follows:

§ 702.419 Action by employer upon acquiring knowledge or being given notice of injury.

Whenever an employer acquires knowledge of an employee's injury, through receipt of a written notice or otherwise, said employer shall forthwith authorize, in writing, appropriate medical care. If a form is prescribed for this purpose it shall be used whenever practicable. Authorization shall also be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

47. Section 702.421 is revised to read as follows:

§ 702.421 Effect of failure to obtain initial authorization.

An employee shall not be entitled to recover for medical services and supplies unless:

(a) the employer shall have refused or neglected a request to furnish such services and the employee has complied with sections 7 (b) and (c) of the Act, 33 U.S.C. 907 (b) and (c) and these regulations; or

(b) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

48. Section 702.422 is revised to read as follows:

§ 702.422 Effect of failure to report on medical care after initial authorization.

(a) Notwithstanding that medical care is properly obtained in accordance with these regulations, a finding by the Director that a medical care provider has failed to comply with the reporting requirements of the Act shall operate as a mandatory revocation of authorization of such medical care provider. The effect of a final finding to this effect operates to release the employer/carrier from liability of the expenses of such care. In addition to this, when such a finding is made by the Director, the claimant receiving treatment will be directed by the deputy commissioner to seek authorization for medical care from another source.

(b) For good cause shown, the Director may excuse the failure to comply with the reporting requirements of the Act and further, may make an

award for the reasonable value of such medical care.

49. In Part 702, new §§ 702.431—702.436 are added to Subpart D to read as follows:

Debarment of Physicians and Other Providers of Medical Services and Suppliers and Claims Representatives

§ 702.431 Grounds for debarment.

A physician or health care provider shall be debarred if it is found, after appropriate investigation as described in § 702.414 and proceedings under §§ 702.432 and 702.433, that such physician or health care provider has:

(a) Knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact for use in a claim for compensation or claim for reimbursement of medical expenses under this Act;

(b) Knowingly and willfully submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Director finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community or in excess of the provider's customary charges, unless the Director finds there is good cause for the bill or request containing the charge;

(c) Knowingly and willfully furnished a service, appliance, or supply which is determined by the Director to be substantially in excess of the need of the recipient thereof or to be of a quality which substantially fails to meet professionally recognized standards;

(d) Been convicted under any criminal statute, without regard to pending appeal thereof, for fraudulent activities in connection with federal or state program for which payments are made to physicians or providers of similar services, appliances, or supplies; or has otherwise been excluded from participation in such program.

(e) The fact that a physician or health care provider has been convicted of a crime previously described in (d), or excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in (d), shall be a prima facie finding of fact for purposes of section 7(j)(2) of the Act, 33 U.S.C. 907(j)(2).

§ 702.432 Debarment process.

(a) *Pertaining to health care providers.* Upon receipt of information indicating that a physician or health care provider has engaged in activities enumerated in subparagraphs (a) through (c) of § 702.431, the Director, through the Director's designees, may evaluate the information (as described in § 702.414) to ascertain whether proceedings should be initiated against the physician or health care provider to remove authorization to render medical care or service under the Longshore and Harbor Workers' Compensation Act.

(b) *Pertaining to health care providers and claims representatives.* If after appropriate investigation the Director determines that proceedings should be initiated, written notice thereof sent certified mail, return receipt requested, shall be provided to the physician, health care provider or claims representative containing the following:

(1) A concise statement of the grounds upon which debarment will be based;

(2) A summary of the information upon which the director has relied in reaching an initial decision that debarment proceedings should be initiated;

(3) An invitation to the physician, health care provider or claims representative to: (i) Resign voluntarily from participation in the program without admitting or denying the allegations presented in the written notice; or (ii) request a decision on debarment to be based upon the existing agency record and any other information the physician, health care provider or claims representative may wish to provide;

(4) A notice of the physician's, health care provider's or claims representative's right, in the event of an adverse ruling by the Director, to request a formal hearing before an administrative law judge;

(5) A notice that should the physician, health care provider or claims representative fail to provide written answer to the written notice described in this section within thirty (30) days of receipt, the Director may deem the allegations made therein to be true and may order exclusion of the physician, health care provider or claims representative without conducting any further proceedings; and

(6) The name and address of the deputy commissioner who shall be responsible for receiving the answer from the physician, health care provider or claims representative.

(c) Should the physician, health care provider or claims representative fail to file a written answer to the notice described in this section within thirty (30) days of receipt thereof, the Director may deem the allegations made therein to be true and may order debarment of the physician, health care provider or claims representative.

(d) The physician, health care provider or claims representative may inspect or request copies of information in the agency records at any time prior to the Director's decision.

(e) The Director shall issue a decision in writing, and shall send a copy of the decision to the physician, health care provider or claims representative by certified mail, return receipt requested. The decision shall advise the physician, health care provider or claims representative of the right to request, within thirty (30) days of the date of an adverse decision, a formal hearing before an administrative law judge under the procedures set forth herein. The filing of such a request for hearing within the time specified shall operate to stay the effectiveness of the decision to debar.

§ 702.433 Requests for hearing.

(a) A request for hearing shall be sent to the deputy commissioner and contain a concise notice of the issues on which the physician, health care provider or claims representative desires to give evidence at the hearing with identification of witnesses and documents to be submitted at the hearing.

(b) If a request for hearing is timely received by the deputy commissioner, the matter shall be referred to the Chief Administrative Law Judge who shall assign it for hearing with the assigned administrative law judge issuing a notice of hearing for the conduct of the hearing. A copy of the hearing notice shall be served on the physician, health care provider or claims representative by certified mail, return receipt requested.

(c) If a request for hearing contains identification of witnesses or documents not previously considered by the Director, the Director may make application to the assigned administrative law judge for an offer of proof from the physician, health care provider or claims representative for the purpose of discovery prior to hearing. If the offer of proof indicates injection of new issues or new material evidence not previously considered by the Director, the Director may request a remand order for purposes of reconsideration of the decision made pursuant to § 702.432 of these regulations.

(d) The parties may make application for the issuance of subpoenas upon a showing of good cause therefore to the administrative law judge.

(e) The administrative law judge shall issue a recommended decision after the termination of the hearing. The recommended decision shall contain appropriate findings, conclusions and a recommended order and be forwarded, together with the record of the hearing,

to the Deputy Under Secretary of Labor for a final decision. The recommended decision shall be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the administrative law judge, the Deputy Under Secretary of Labor shall issue a final decision.

§ 702.434 Judicial review.

(a) Any physician, health care provider or claims representative, after any final decision of the Deputy Under Secretary made after a hearing to which such person was a party, irrespective of the amount of controversy, may obtain a review of such decision by a civil action commenced within sixty (60) days after the mailing to him or her of notice of such decision, but the pendency of such review shall not operate as a stay upon the effect of such decision. Such action shall be brought in the Court of Appeals of the United States for the judicial circuit in which the plaintiff resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia pursuant to section 7(j)(4) of the Act, 33 U.S.C. 907(j)(4).

(b) As part of the Deputy Under Secretary's answer, he or she shall file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith.

(c) The findings of fact of the Deputy Under Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.

§ 702.435 Effects of debarment.

(a) The Director shall give notice of the debarment of a physician, hospital, or provider of medical support services or supplies to:

(1) All OWCP district offices;

(2) The Health Care Financing Administration;

(3) The State or Local authority responsible for licensing or certifying the debarred party;

(4) The employers and authorized insurers under the Act by means of an annual bulletin sent to them by the Director; and

(5) The general public by posting in the district office in the jurisdiction where the debarred party maintains a place of business.

If a claims representative is debarred, the Director shall give notice to those groups listed in paragraphs (a) (1), (3), (4), and (5) of this section.

(b) Notwithstanding any debarment under this subpart, the Director shall not refuse a claimant reimbursement for any otherwise reimbursable medical expense if the treatment, service or supply was rendered by debarred provider in an emergency situation. However, such claimant will be directed by the Director to select a duly qualified provider upon the earliest opportunity.

§ 702.436 Reinstatement.

(a) If a physician or health care provider has been debarred or pursuant to § 702.431(d) or if a claims representative has been debarred pursuant to § 702.131(c) (1) or (3) the person debarred will be automatically reinstated upon notice to the Director that the conviction or exclusion has been reversed or withdrawn. However, such reinstatement will not preclude the Director from instituting debarment proceedings based upon the subject matter involved.

(b) A physician, health care provider or claims representative otherwise debarred by the Director may apply for reinstatement to participate in the program by application to the Director after three years from the date of entry of the order of exclusion. Such application for reinstatement shall be addressed to the Associate Director for the Longshore program, and shall contain a statement of the basis of the application along with any supporting documentation.

(c) The Director may further investigate the merits of the reinstatement application by requiring special reporting procedures from the applicant for a probationary period not to exceed six months to be monitored by the district office where the provider maintains a place of business.

(d) At the end of aforesaid probationary period, the Director may order full reinstatement of the physician, health care provider or claims representative if such reinstatement is clearly consistent with the program goal to protect itself against fraud and abuse and, further, if the physician, health care provider or claims representative has given reasonable assurances that the basis for the debarment will not be repeated.

50. By adding in Subpart D of Part 702 a new § 702.441 to read as follows:

§ 702.441 Claims for loss of hearing.

(a) Claims for hearing loss pending on or filed after September 28, 1984 (the date of enactment of Pub. L. 98–426) shall be adjudicated with respect to the determination of the degree of hearing impairment in accordance with these regulations.

(b) An audiogram shall be presumptive evidence of the amount of hearing loss on the date administered if the following requirements are met:

(1) The audiogram was administered by a licensed or certified audiologist, by a physician certified by the American Board of Otolaryngology, or by a technician, under an audiologist's or physician's supervision, certified by the Council of Accreditation on Occupational Hearing Conservation, or by any other person considered qualified by a hearing conservation program authorized pursuant to 29 CFR 1910.95(g)(3) promulgated under the Occupational Safety and Health Act of 1970 (29 U.S.C. 667). Thus, either a professional or trained technician may conduct audiometric testing. However, to be acceptable under this subsection, a licensed or certified audiologist or otolaryngologist, as defined, must ultimately interpret and certify the results of the audiogram. The accompanying report must set forth the testing standards used and describe the method of evaluating the hearing loss as well as providing an evaluation of the reliability of the test results.

(2) The employee was provided the audiogram and a report thereon at the time it was administered or within thirty (30) days thereafter.

(3) No one produces a contrary audiogram of equal probative value (meaning one performed using the standards described herein) made at the same time. "Same time" means within thirty (30) days thereof where noise exposure continues or within six (6) months where exposure to excessive noise levels does not continue. Audiometric tests performed prior to the enactment of Pub. L. 98–426 will be considered presumptively valid if the employer complied with the procedures in this section for administering audiograms.

(c) In determining the amount of pre-employment hearing loss, an audiogram must be submitted which was performed prior to employment or within thirty (30) days of the date of the first employment-related noise exposure. Audiograms performed after December 27, 1984 must comply with the standards described in paragraph (d), of this section.

(d) In determining the loss of hearing under the Act, the evaluators shall use the criteria for measuring and calculating hearing impairment as published and modified from time-to-time by the American Medical Association in the *Guides to the Evaluation of Permanent Impairment*, using the most currently revised edition of this publication. In addition, the audiometer used for testing the individual's threshold of hearing must be calibrated according to current American National Standard

Specifications for Audiometers. Audiometer testing procedures required by hearing conservation programs pursuant to the Occupational Safety and Health Act of 1970 should be followed (as described at 29 CFR, Section 1910.95 and appendices).

(Approved by the Office of Management and Budget under control number 1215-0160.)

51. In Part 702, a new Subpart F (§ 702.601 through 702.604) is added to read as follows:

Subpart F—Occupational Disease Which Does Not Immediately Result in Death or Disability

§ 702.601 Definitions.

(a) *Time of injury.* For purposes of this subpart and with respect to an occupational disease which does not immediately result in death or disability, the time of injury shall be deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

(b) *Disability.* With regard to an occupational disease for which the time of injury, as defined in § 702.601(a), occurs after the employee was retired, disability shall mean permanent impairment as determined according to the *Guides to the Evaluation of Permanent Impairment* which is prepared and modified from time-to-time by the American Medical Association, using the most currently revised edition of this publication. If this guide does not evaluate the impairment, other professionally recognized standards may be utilized. The disability described in this paragraph shall be limited to permanent partial disability. For that reason they are not subject to adjustments under section 10(f) of the Act, 33 U.S.C. 910(f).

(c) *Retirement.* For purposes of this subpart, retirement shall mean not being employed and having no earnings with no reasonable expectation of returning to the workforce.

§ 702.602 Notice and claims.

(a) *Time for giving notice of injury or death.* Refer to § 702.207.

(b) *Time for filing of claims.* Refer to § 702.212.

§ 702.603 Determining the payrate for compensating occupational disease claims which become manifest after retirement.

(a) If the time of injury occurs within the first year after the employee has retired, the payrate for compensation purposes shall be one fifty-second part of the employee's average annual earnings during the fifty-two week period preceding retirement.

(b) If the time of injury occurs more than one year after the employee has retired the payrate for compensation purposes shall be the national average weekly wage, determined according to section 6(b)(3) of the Act, 33 U.S.C. 906(b)(3), at the time of injury.

§ 702.604 Determining the amount of compensation for occupational disease claims which become manifest after retirement.

(a) If the claim is for disability benefits and the time of injury occurs after the employee has retired, compensation shall be 66⅔ percent of the payrate, as determined under § 702.603, times the disability, as determined according to § 702.601(b).

(b) If the claim is for death benefits and the time of injury occurs after the decedent has retired, compensation shall be the percent specified in section 9 of the Act, 33 U.S.C. 909, times the payrate determined according to § 702.603. Total weekly death benefits shall not exceed one fifty-second part of the decedent's average annual earnings during the fifty-two week period preceding retirement.

PART 703—INSURANCE REGULATIONS

52. In Part 703, a new § 703.003 is added to read as follows:

§ 703.003 Failure to secure coverage; penalties.

(a) Each employer is required to secure coverage under this Act either through an authorized insurance carrier or by becoming an authoried self-insurer. An employer who fails to secure coverage by either manner described in Section 32(a), (1) or (2) of the Act, 33 U.S.C. 932(a), is subject, upon conviction, to a fine of not more than $10,000, or by imprisonment for not more than one year, or both.

(1) Where the employer is a corporation: the president, secretary and treasurer each will also be subject to this fine and/or imprisonment, in addition to the fine against the corporation and each is personally liable, jointly with the corporation, for all compensation or other benefits payable under the Act during the time failure to secure coverage continues.

(b) Any employer who willingly and knowingly transfers, sells, encumbers, assigns or in any manner disposes of, conceals, secretes, or destroys any property belonging to the employer after an employee sustains an injury covered by this Act, with the intention to avoid payment to that employee or his/her dependents of compensation under this Act shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $10,000 and/or imprisonment for one year.

(1) Where the employer is a corporation: the president, secretary and treasurer are also each liable to imprisonment and, along with the corporation, jointly liable for the fine.

§ 703.102 [Amended]

53. In § 703.102 the zip code 20211 is changed to 20210.

§ 703.107 [Removed]

54. In Part 703, § 703.107 is removed.

55. § 703.108 is revised to read as follows:

§ 703.108 Period of authority to write insurance.

Effective with the end of the authorization period July 1, 1983, through June 30, 1984, annual reauthorization of authority to write insurance coverage under the Act is no longer necessary. Beginning July 1, 1984, and thereafter, newly issued Certificates of Authority will show no expiration date. Certificates of Authority will remain in force for so long as the carrier complies with the requirements of the OWCP.

56. § 703.118 is revised to read as follows:

§ 703.118 Agreement to be bound by report.

Every applicant for authority to write insurance under the provisions of this Act, shall be deemed to have included in its application an agreement that the acceptance by the deputy commissioner of a report of the issuance of a policy of insurance, as provided for by § 703.116, shall bind the carrier to full liability for the obligations under this Act of the employer named in said report, and every certificate of authority to write insurance under this Act shall be deemed to have been issued by the Office upon consideration of the carrier's agreement to become so bound. It shall be no defense to this agreement that the carrier failed or delayed to issue the policy to the employer covered by this report.

§ 703.302 [Amended]

57. § 703.302 is amended by revising paragraph (d) and adding an OMB control number as follows:

" * * * (d) a certified financial report for each of the three years preceding the application;"

(Approved by the Office of Management and Budget under control number 1215-0160).

58. § 703.304 is revised to read as follows:

§ 703.304 Filing of agreement and undertaking.

The applicant for the privilege of self-insurance shall as a condition subsequent to receiving authorization to act as a self-insurer, execute and file with the Office and agreement and undertaking in a form prescribed and provided by the Office in whch the applicant shall agree: (a) To pay when due, as required by the provisions of said Act, all compensation payable on account of injury or death of any of its employees injured within the purview of said Act; (b) in such cases to furnish medical, surgical, hospital, and other attendence, treatment and care as required by the provisions of said Act; (c) to deposit with the Office an indemnity bond in the amount which the Office shall fix, or to deposit negotiable securities as provided for by the regulations in this part in the amount which the Office shall fix, accordingly as elected in the application; (d) to authorize the Office to sell such negotiable securities so deposited or any part thereof and from the proceeds thereof to pay such compensation, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable; and (e) to obtain and maintain, if required by the Office, excess or catastrophic insurance, in amounts to be determined by the Office.

59. Section 703.305 is revised to read as follows:

§ 703.305 Decision upon application of employer; furnishing of indemnity bond or deposit of negotiable securities required.

The applicant for the privilege of self-insurance, as a condition subsequent to receiving authorization to act as self-insurer, shall give security for the payment of compensation and the discharge of all other obligations under the said Act, in the amount fixed by the Office, which may be in the form of an indemnity bond with sureties satisfactory to the Office, or of a deposit of negotiable securities as provided in the regulations in this part. The amount of such security so to be fixed and required by the Office shall be such as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an employer by the Act. In fixing the amount of such security the Office will take into account the financial standing of the employer, the nature of the work in which he is engaged, the hazard of the work in which the employees are employed, the payroll exposure, and the accident experience as shown in the application and the Office's records, and any other facts which the Office may deem pertinent. Additional security may be required at any time in the discretion of the Office. The indemnity bond which is required by these regulations shall be in such form, and shall contain such provisions, as the Office may prescribe: *Provided*, That only surety companies approved by the United States Treasury Department under the laws of the United States and the rules and regulations governing bonding companies may act as sureties on such indemnity bonds.

60. Section 703.306 is revised to read as follows:

§ 703.306 Kinds of negotiable securities which may be deposited; conditions of deposit; acceptance of deposits.

An applicant for the privilege of self-insurance electing to deposit negotiable securities to secure his obligations under said Act in the amount fixed by the Office under the regulations in this part shall deposit any negotiable securities acceptable as security for the deposit of public monies of the United States under regulations issued by the Secretary of the Treasury. The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States when authorized under the regulations in this part to receive deposits of such securities.

61. § 703.310(a) is revised to read as follows:

§ 703.310 Reports required of self-insurers; examination of accounts of self-insurer.

* * * * *

(a) A certified financial statement of the self-insurer's assets and liabilities, or a balance sheet.

* * * * *

62. § 703.311 is revised to read as follows:

§ 703.311 Period of authorization as self-insurer.

(a) Effective with the end of the authorization period July 1, 1983, through June 30, 1984, annual reauthorization of the self-insurance privilege is no longer necessary. Beginning July 1, 1984, and thereafter, newly approved and renewed self-insurance authorizations will remain in effect for so long as the self-insurer complies with the requirements of the OWCP.

(b) A self-insurer who currently has on file an indemnity bond, will receive from the office, on or about May 10 of each year, a bond form for execution in contemplation of the continuance of the self-insurance authorization, and the submission of such bond duly executed in the amount indicated by the office will be deemed and treated as a condition of the continuing authorization.

Signed at Washington, D.C., this 24th day of December 1984.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84-33911 Filed 12-27-84; 3:44 pm]

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January 3, 1985

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 540 and 550

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540 and 550

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rules.

SUMMARY: The Bureau of Prisons is publishing final amendments to its rules on incoming publications and on urine surveillance to detect and deter illegal drug use. The rule on incoming publications is amended to state that inmates may receive newspapers only from the publisher, a book club, or a bookstore. This amendment is intended to allow institution mailroom staff to more effectively use their time, while reducing the likelihood of unauthorized items (contraband) being smuggled into the institution in a newspaper. The rule on urine surveillance is amended to clarify the existing language and to require that staff prepare an incident report on an inmate who is unwilling to provide a urine sample within two hours of a request for it.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW, Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing final amendments to its rules on incoming publications and on urine surveillance to detect and deter illegal drug use. The Bureau published an amendment to its final rule on incoming publications in the **Federal Register** May 14, 1984 (at 49 FR 20432). The Bureau published amendments to its final rule on urine surveillance to detect and deter illegal drug use in the **Federal Register** August 17, 1984 (at 49 FR 32999 et seq.). Interested persons were invited to submit comments on the proposed amendments. Members of the public may submit comments concerning the final rule amendments by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Incoming Publications—Summary of Changes

Proposed § 540.71(a) is modified to allow an inmate to receive newspapers only from a publisher, from a book club, or from a bookstore. Public commenters raised various objections to the proposed amendment. Several comments were made concerning inmate libraries. An inmate at one federal facility stated that newspapers are not available for reading at the institution library. Other comments stated that many inmates enjoy reading newspapers not available in the institution library, and that library services are "uneven" (among institutions) both in terms of the newspapers they provide and inmate accessibility.

The Bureau of Prisons policy on inmate libraries is covered in 28 CFR, Part 544, Subpart K. That rule states library services shall ordinarily be available to all inmates daily, including evenings and weekends, and that the library shall offer an inmate a variety of reading materials, including newspapers. The selection of which newspapers to offer is left with the institution. While it is not possible to have every newspaper of interest to inmates in the institution library, efforts are made to select ones that will be of greatest interest to the local population. As to library hours, each institution structures its own hours, based on patterns of inmate usage at that institution.

One commenter considers the proposed amendment arbitrary, discriminatory, and violative of the First Amendment. Specifically, the commenter suggests the rule's effect is to bar First Amendment materials from a prison. The commenter also believes the amendment violates equal protection because it applies only to newspapers, not to magazines or other printed material. Other comments suggested that the amendment will punish the poorer prisoner who cannot subscribe to numerous newspapers, and whose family cannot afford to pay for the inmate's subscription, that the rule discriminates between those inmates who have the financial means to purchase a subscription against those who do not, and that the proposed amendment would impact on the availability of newspapers for "indigent and poor prisoners who depend on their families and friends to directly send copies of home-town newspapers (that they probably have previously purchased and read . . .)." Other comments suggest that the proposed amendment is unfair and impractical, because inmates can be transferred from one institution to another, thereby creating difficulty in receiving the subscription; that subscriptions may be available only on a multi-month basis; and that the net effect of the rule is to substantially restrict or eliminate newspapers for pre-sentence prisoners, civil contemnors, short-term prisoners, those placed in segregation, and others who may be moved from jail to jail.

The United States Supreme Court, in *Bell* v. *Wolfish*, 99 S.Ct. 1861 (1979), stated that there must be a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application". While the Court's focus in *Wolfish* was directed to hardcover books, in our experience the same security concerns and administrative difficulties that exist for hardcover publications also exist where newspapers are concerned. Such concerns do not exist to the same degree for magazines or soft-cover materials, which are fewer in number and bulk, and so under experience to this point may be received from any source. An effective search of newspapers is far more time-consuming.

The "publisher-only" rule does not prohibit inmate access to full reporting of the news. The rule as drafted operates in a neutral fashion, and does not unnecessarily restrict the inmate's access to newspapers. While the revised policy, as suggested by commenters, may affect a particular inmate's ability to obtain or read a specific newspaper, the Bureau's rules provide alternative means of access. For example, newspaper clippings may be forwarded to the inmate by persons in the community (including family and friends), newspaper subscriptions can be obtained, and a cross-section of newspapers are made available for reading in the institution's library. Of course, radio and television news coverage is also available. Bureau policy (§ 544.101(d)) also provides for library services to be made available to an inmate in special housing status (e.g., segregation).

Comments were also received challenging the Bureau's position that contraband can be smuggled into the institution through "large" newspapers, and suggesting that the alleged security problem is only a "ruse"; that it is administrative "slothfulness", not contraband, which is the real problem.

that contraband can be smuggled into an institution within a magazine just as easily. Another commenter suggested the intent of the rule is administrative convenience, that the rule allows staff to avoid any inspection or reading responsibilities.

The Bureau's experience, as indicated above, is that newspapers are a far bigger problem than magazines, due to numbers and size. A newspaper consists of many large and separate pages, each section requiring careful review. In contrast, a magazine is ordinarily stapled together and better lends itself to review (for example, by "shaking" or thumbing through the pages). The proposed amendment is not based on administrative convenience or "slothfulness". Institutional mail room staff are hard pressed to process a large amount of mail, including correspondence, magazines, etc. While each item must be inspected for contraband, this must be done without unduly affecting the delivery of the mail. Because of their volume and bulk, the search of newspapers takes a substantial and inordinate amount of available staff time. This procedure poses both security concerns and administrative difficulties (e.g., impact on prompt mail delivery) and can result in a significant drain on available staff resources. These problems are reduced, without significant effect on the general inmate population, by requiring newspapers to be sent from the publisher, from a book club, or from a bookstore. Contrary to the thrust of a comment, newspapers sent in this manner will be inspected and read, but should not require the same level of review required for items received from private or unidentified sources.

The Bureau of Prisons does not believe it necessary to adopt a federal inmate's request for an evidentiary hearing at which he can testify. As pertains to informal rulemaking, the Administrative Procedure Act does not require oral hearings, nor does one appear necessary in the present situation.

Urine Surveillance to Detect and Deter Illegal Drug Use—Summary of Changes

In § 550.30(a) the extraneous word "known" is deleted, with the intent of the section unchanged. In paragraph (b), the more descriptive word "justifiable" is substituted for "justified". Several revisions are made to paragraph (c) in an effort to clarify its intent. The first sentence is clarified by stating that staff of the same sex as the inmate tested shall directly supervise the giving of the urine sample [as opposed to conducting the later test]. In the second sentence of paragraph (c) and the last sentence of paragraph (b), the more accurate "incident report" is substituted for "disciplinary report". The final rule requires staff to keep the inmate under direct "visual" supervision during the two-hour period, or until a complete sample is obtained.

During the review process, a question arose as to distinguishing "unwilling" from "unable". In response, the Bureau's final rule specifically allows an inmate four ounces of water at the time staff requests the sample. This language replaces the proposed rule's "may not be permitted to consume excessive fluids during this period". This change in procedure should assist an inmate in providing a sample. The final rule also states an inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the allotted time period. The inmate may rebut the "unwilling" presumption during the disciplinary process. (Note: Internal staff instructions state that while four ounces of water is ordinarily offered and that two-hours is the ordinary time period, the Captain may authorize additional water or extend the time period where warranted by the specific situation—for example, where the inmate has a documented medical problem.)

List of Subjects in 28 CFR Parts 540 and 550

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: December 27, 1984.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

In Subchapter C, revise Parts 540 and 550 to read as follows:

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

I. In Subchapter C, Part 540, amend Subpart F to read as follows:

Subpart F—Incoming Publications

A. The authority citation for Part 540, Subpart F reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

B. In § 540.71, revise paragraph (a) to read as follows:

§ 540.71 Procedures.

(a) An inmate may receive hardcover publications and newspapers only from the publisher, from a book club, or from a bookstore. An inmate may receive other softcover material (for example, paperback books, newspaper clippings, or magazines) from any source. The Warden may have all incoming publications inspected for contraband.

* * * * *

PART 550—DRUG PROGRAMS

II. In Subchapter C, Part 550, Subpart D is revised to read as follows:

Subpart D—Urine Surveillance to Detect and Deter Illegal Drug Use

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4251–4255, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 550.30 Purpose and scope.

(a) The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

(b) Institution staff shall determine whether a justifiable reason exists, (e.g., use of prescribed medication) for any positive urine test result. If the inmate's urine test shows a positive test result for the presence of drugs which cannot be justified, staff shall file an incident report.

(c) Staff of the same sex as the inmate tested shall directly supervise the giving of the urine sample. If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff shall file an incident report. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct visual supervision during this two-hour period, or until a complete sample is furnished. To assist the inmate in giving the sample, staff shall offer the

inmate four ounces of water at the beginning of the two-hour time period. An inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the allotted time period. An inmate may rebut this presumption during the disciplinary process.

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federal register

Thursday
January 3, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 866

Denial of Request to Change Classification of the Immunoglobulins A, G, M, D, and E Immunological Test System; Final Rule-Related Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 83N-0198]

Denial of Request To Change Classification of the Immunoglobulins A, G, M, D, and E Immunological Test System

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying five requests for reclassification of the immunoglobulins A, G, M, D, and E immunological test system from class II (performance standards) into class I (general controls). FDA will continue the procedure to establish a performance standard for the device.

FOR FURTHER INFORMATION CONTACT: Samuel W. Fleisher, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

History of the Proceedings

In the **Federal Register** of November 9, 1982 (47 FR 50814), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation (21 CFR 866.5510) classifying the medical device immunoglobulins A, G, M, D, and E immunological test system (Ig test system) into class II. An Ig test system is a device that consists of the reagents used to measure by immunochemical techniques the immunoglobulins A, G, M, D, and E (serum antibodies) in serum. Measurement of these immunoglobulins aids in the diagnosis of abnormal protein metabolism and the body's lack of ability to resist infectious agents.

Section 514(b)(1) of the act (21 U.S.C. 360(b)(1)) and §§ 860.132(a) and 861.20(a) of FDA's regulations (21 CFR 860.132(a) and 861.20(a)) require that a proceeding for the establishment of a performance standard for a device classified into class II be initiated by publication in the **Federal Register** of a notice providing interested persons an opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. Accordingly, to initiate a proceeding for the establishment of a performance standard for the Ig test system, FDA published a notice in the **Federal Register** of July 8, 1983 (48 FR 31391), to allow interested persons an opportunity under section 514(b)(2) of the act to request, in accordance with section 513(e) of the act, reclassificaiton of the device from class II into class I or class III (premarket approval).

In response to the notice, the College of American Pathologists, Skokie, IL 60077; Kallestad Laboratories, Inc., Chaska, MN 55313; Miles Laboratories, Inc., Elkhart, IN 46515; the Health Industry Manufacturers Association, Washington, DC 20005; and the Pharmaceutical Manufacturers Association, Washington, DC 20005, submitted to FDA timely reclassification petitions requesting FDA to change the classification of the device from class II into class I.

The Legal Standard Governing Reclassification

Section 514(b) of the act requires any reclassification petition submitted in response to a notice issued under section 514(b) to set forth new information relevant to the classificaiton of the device. The term "new information" comprehends information developed as a result of reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Hollard-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and § 860.7 of the regulations governing medical device classification procedures. As specified in § 860.7(c), FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

In addition, the valid scientific evidence upon which the agency relies for the purpose of reclassification is required by section 520(c) of the act (21 U.S.C. 360j(c)) to be publicly available, i.e., the evidence may not be trade secret or confidential commercial information in (1) any premarket approval application (PMA) for a device or (2) any other reports obtained by the agency under any of the sections of the act that are specified in section 520(c) of the act.

The Panel's Recommendation

FDA referred the petitions to the then Immunology Device Section of the Immunology and Microbiology Devices Panel, an FDA advisory committee, for its consideration and a recommendation on the change in classification requested by the petitioners. (On April 14, 1984, the Immunology and Microbiology Devices Panel was terminated. Concurrently, FDA established the Immunology Devices Panel (see 49 FR 17446; April 24, 1984).) During an open public meeting on September 16, 1983, the Panel considered the petitions and recommended that the Ig test system remain classified in class II.

After reviewing the petitions and the Panel recommendation, FDA determined that none of the petitions provided sufficient new, publicly available, valid scientific evidence to show (1) why the device should not remain in class II and (2) that class I would provide reasonable assurance of the safety and effectiveness of the device. Therefore, the Ig test system will remain classified in class II.

FDA's Conclusions

The following is a summary of the petitions, the Panel's considerations, and FDA's conclusions with respect to the information and views on which the petitioners relied as grounds for their request that the agency change the classification of the device.

Labeling Requirements

1. Each of the five petitioners argues that the labeling requirements of § 809.10 of FDA's regulations governing in vitro diagnostic products for human use (21 CFR 809.10) are sufficient to provide reasonable assurance of the safety and effectiveness of the Ig test system. Under § 809.10(b), manufacturers are required to identify, where appropriate, performance characteristics of the device (i.e., accuracy, precision, sensitivity, and specificity), and each petitioner argues that this information is adequate for users to evaluate the test results.

The Panel briefly addressed the labeling requirements of § 809.10 and concluded that they do not guarantee uniformity of test results by users of various manufacturers' Ig test system products because labeling alone cannot ensure such uniformity.

FDA agrees with the Panel and disagrees with the petitioners. FDA notes that the Panel based its original recommendation that the Ig test system be classified into class II on the variability in the performance of the device (45 FR 27334-27336; April 22, 1980) and that the agency proposed to classify and subsequently classified the device into class II (see 45 FR 27335; 47

FR 50814; November 9, 1982), for the same reason. FDA also notes that during the classification process, the Panel pointed out that the International Union of Immunological Societies under the World Health Organization is developing standards for the various immunoglobulins (Ref. 8).

Scientists have established through repetitious testing of specimens from the same individuals that normal individuals vary as much as plus or minus 11 percent in levels of immunoglobulins A, G, M, D, and E. The expected or inherent variability in laboratory precision for the Ig test system has been estimated at plus or minus 6 percent (Ref. 4). Using 12 serum specimens, 3 separate evaluations of the accuracy and sensitivity of 5 manufacturers' Ig test system products conducted in the mid-1970's revealed variations of 100 percent in the expected test results (Refs. 5 through 7).

Data (Ref. 1) submitted by two of the petitioners show that the problem of variability in the performance of the Ig test system persists. Ritchie and Rippey (Ref. 1) reviewed and evaluated the College of American Pathologists' (CAP) survey data for IgA, IgG, and IgM collected during a 2-year period from 1979 through 1981, and found that when the results were tabulated by individual manufacturers' products, there were significant differences in performance of the same reagent manufactured by different manufacturers. For example, for high-level specimens of IgA, the average all-method coefficient of variation (measure of relative variability) ranged from 5.0 percent to 31.0 percent. Similarly, for high-level specimens of IgG, the average all-method coefficient of variation ranged from 5.6 percent to 13.1 percent and for high-level specimens of IgM, the average all-method coefficient of variation ranged from 4.3 percent to 43.8 percent. Furthermore, for 5,879 results tabulated from the 4 major manufacturers of radial immunodiffusion plates employing the Fahey technic, precision ranged from a coefficient of variation of 11.1 percent to 19.2 percent. Ritchie and Rippey conclude that differences in interlaboratory performance reported in the CAP surveys and summarized in their article highlight the need for appropriate and widely accepted standards for upgrading quantitative immunoglobulin determinations. Ritchie and Rippey also cite the 1980 Centers for Disease Control (CDC) Immunochemistry Proficiency Testing Summary Analysis (Ref. 2), which consists of interlaboratory data and shows distinct differences in accuracy and precision according to measurement method, but does not tabulate results by manufacturers of Ig test system products.

Accurate and complete labeling for the Ig test system provides useful information, but labeling alone does not provide reasonable assurance of the safety and effectiveness of the device. Labeling does not solve the problem of variability in the performance of different manufacturers' Ig test system products, assure the accuracy of individual test results, or assure the sensitivity or specificity of the device. A device for which there is otherwise no reasonable assurance of safety and effectiveness is not made safe and effective by merely warning the user of the fact in the device's labeling.

Class I Controls Other Than Labeling

2. Four petitioners argue that other general controls, in addition to the labeling requirements discussed in paragraph 1 of this notice, are sufficient to provide reasonable assurance of the safety and effectiveness of the Ig test system. Specifically, the petitioners argue that establishment inspections conducted by FDA under section 704 of the act (21 U.S.C. 374) ensure that quality control and device distribution procedures are followed and that manufacturers comply with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). Further, according to three petitioners, FDA's authority under section 304(g)(1) of the act (21 U.S.C. 334(g)(1) to detain devices and FDA's authority under section 516 of the act (21 U.S.C. 360f) to make devices banned devices enable the agency to ensure that dangerous or ineffective devices are removed from the marketplace.

The Panel acknowledged that Ig test systems may be manufactured in accordance with the CGMP regulations, but said that the general controls do not guarantee uniformity of test results by users of various manufacturers' Ig test systems.

FDA disagrees with the petitioners. To reclassify a device under section 513(e) of the act, the act and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. For a class II device to be reclassified into class I, the act and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class II and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device. The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). If the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class I (see section 513(a)(1)(A) of the act).

Although FDA recognizes that the general controls are useful in the regulation of the Ig test system, the agency has concluded that these controls by themselves do not provide reasonable assurance of the safety and effectiveness of the device. As discussed in paragraph 1 of this notice, data submitted by two of the petitioners show that there still is a problem with variability in the performance of different manufacturers' Ig test system products. Compliance with the CGMP regulations under section 520(f) of the act and Part 820 ensures that a device conforms to its specifications. However, neither the CGMP regulations nor establishment inspections under section 704 of the act provide the data to ensure that the specifications are adequate to provide reasonable assurance of the safety and effectiveness of the device. Furthermore, although compliance with the CGMP regulations reduces the problem of lot-to-lot variability for a given manufacturer, such compliance cannot address, much less reduce, the problem of manufacturer-to-manufacturer variability.

Administrative detention under section 304(g)(1) of the act and § 800.55 of the regulations (21 CFR 800.55) is of little use in assuring the continued safety and effectiveness of a device. Section 304(g)(1) of the act merely provides for the temporary detention of a device, encountered during inspection, that an authorized FDA employee has reason to believe is adulterated or misbranded, until FDA has had time to consider what further action it should take concerning the device and to initiate judicial enforcement action, if appropriate (see section 304(g)(1) of the act; § 800.55(a)). Similarly, making a device a banned device under section 516 of the act and Part 895 of the regulations (21 CFR Part 895) is of limited use; FDA may make a device a banned device only after the agency has

determined that the device presents substantial deception or an unreasonable and substantial risk of illness or injury (section 516(a) of the act; § 895.1).

3. Three petitioners argue that FDA's regulations governing premarket notification procedures (21 CFR Part 807, Subpart E) ensure that FDA is advised of the proposed introduction of a new devise and permit FDA to determine whether such a device is substantially equivalent to a preamendments device (i.e., a device in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94–295)) or to a postamendments device (i.e., a device that was not in commercial distribution before that date) that has been reclassified into class I or class II.

FDA's review of premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 is intended to permit the agency to determine the status of a postamendments device under section 513(f)(1) of the act, which classifies into class III and requires premarket approval or reclassification of any postamendments device that is not "substantially equivalent" to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For postamendments device to be "substantially equivalent," its intended use may not differ from, and its materials, design, and energy source, among other things, may not differ materially from, those of the preamendments or reclassified device. See H.R. Rept. No. 94–853, 94th Cong., 2d Sess. 36 (1976). In addition, any variation between the postamendments and the preamendments or reclassified device may not materially affect safety or effectiveness. See *id.* at 36–37. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or effective, nor to determine whether the preamendments device to which substantial equivalence is claimed is safe and effective. Rather, the premarket notification submission only permits FDA to determine whether the postamendments device is no less safe and effective than the preamendments device. Thus, a determination by FDA that a postamedments device is "substantially equivalent" is not a determination that the device is not adulterated or misbranded or that it is otherwise safe or affective; therefore, review of premarket notification submissions cannot provide reasonable assurance of the safety or effectiveness of a device.

For these reasons and the reasons discussed in paragraphs 1 and 2 of this notice, FDA concludes that the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the Ig test system, and that the petitioners have not shown that a performance standard is not needed to provided such assurance.

Miscellaneous

4. Each of the five petitioners states that the test result is not the sole basis of a diagnosis and that the physician's role in the use of the test result should not be underestimated. The petitioners state that the test performance is enhanced and given meaning by the interpretive judgement of the pathologists and attending physicians and that good medical practice calls for repeating a laboratory test if unexpected or unsupported results are obtained. Therefore, the petitioners argue, the risks to the health of the patient from the an erroneous test result is reduced. Consequently, according to the petitioners, the Panel and FDA did not assess these risks correctly.

The Panel did not address this issue.

FDA agrees with the petitioners that the physician's role in the interpretation of the Ig test system test results should be considered. FDA advises, however, that the physician's role was considered by the panel and the agency when the device was proposed for classification into class II in that the Panel based its recommendation, in part, on its clinical experience with the device (see 45 FR at 27335). The petitions do not contain any new information that establishes that either the panel or FDA underestimated the physician's role in the interpretation of test results. In any event, FDA is responsible for ensuring that the device that furnishes the test result to the physician is both safe and effective. Nothing in the petitions establishes that the physician's role will in any way compensate for the variability in the performance of the Ig test system such that the device can be considered safe and effective.

FDA notes, moreover, that there are some diseases (e.g., Waldenstrom's macroglobulinemia, immune deficiency disease) in which the test results are the sole basis of diagnosis. The consequences of an erroneous test result (false-positive) are misdiagnosis and inappropriate therapy which may lead to needless mental anxiety, physical discomfort, and financial expense for the patient. An erroneous test result (false-negative) may lead to a failure to detect and treat diseases such as Waldenstrom's macroglobulinemia and immune deficiency disease.

5. Two petitioners state that there have been few reports of problems with the Ig test system, even though various problem-reporting mechanisms, including FDA's Device Experience Network (DEN), exist.

The Panel disagreed, stating that one of the problems with the Ig test system is the absence of a standard to which users can compare performance. In the absence of such a standard, users are unable to evaluate effectiveness and are unlikely to complain.

FDA agrees with the Panel. Based on its experience, FDA does not believe that voluntarily submitted adverse experience reports, including those reported to DEN, are an accurate reflection of the actual levels of adverse experiences with devices. (See the preamble to FDA's final rule on medical device reporting, 49 FR 36326 at 36328; September 14, 1984.)

6. Four petitioners state that Ig test system reference preparations are available from the World Health Organization (WHO) and CAP. One petitioner submitted an article (Ref. 9) that describes a project to have selected experts cooperatively assign to reference preparations of IgG, IgA, and IgM the best possible estimates of mass content. The petitioners argue that all these preparations can be used voluntarily by manufacturers to standardize immunoglobulin tests.

The Panel acknowledged the availability of these reference materials, but pointed out that Ritchie and Rippey reviewed and evaluated CAP survey data for IgA, IgG, and IgM, collected during a 2-year period from 1979 through 1981 (Ref. 1). These authors found that when the data were tabulated by individual manufacturers' Ig test system products, there were significant differences in performance of the same reagent manufactured by different manufacturers (see paragraph 1 of this notice). Ritchie and Rippey conclude that differences in interlaboratory performance highlight the need for appropriate and widely accepted standards for upgrading quantitative immunoglobulin determinations. The authors also cite the 1980 CDC Immunochemistry Proficiency Testing Summary Analysis (Ref. 2), which consists of interlaboratory data. The

CDC analysis shows distinct differences in accuracy and precision according to measurement method, but does not tabulate results by manufacturers of Ig test system products. Because the CAP survey did not employ any universally accepted standard, accuracy was not evaluated by Ritchie and Rippey. The Panel concluded that the differences in interlaboratory performance reported by Ritchie and Rippey in their review of the CAP data highlight the need for appropriate and widely accepted standards for upgrading quantitative immunoglobulin determinations.

FDA agrees with the Panel. The act does not permit the reclassification (or classification) of a device into class I unless the general controls, by themselves, are sufficient to provide reasonable assurance of the safety and effectiveness of the device. Adherence to a voluntary standard, even if that standard is adequate, is not a legally defensible basis for reclassifying (or classifying) a device into class I. Furthermore, in spite of the availability of Ig test system reference preparations, Ritchie and Rippey in their review (Ref. 1) of recent CAP survey test data show that there are significant differences in performance of the same reagent manufactured by different manufacturers. In addition, the 1980 CDC Immunochemistry Proficiency Testing Summary Analysis (Ref. 2), shows distinct differences in accuracy and precision according to measurement method. Some improvement was noted when a few manufacturers voluntarily calibrated their Ig test system antigens against the WHO antigen reference preparation. However, calibration of their Ig test system antigens against the WHO antigen reference preparation was not done by all manufacturers and, therefore, could not provide reasonable assurance of the safety and effectiveness of the Ig test system. Reimer et al. (Ref. 9) discuss a collaborative CAP-U.S. program to make available for use as reference preparations very accurately measured samples of IgG, IgA, and IgM antigens. However, this program is wholly voluntary, and adherence to it cannot show that the general controls by themselves are sufficient to provide reasonable assurance of the safety and effectiveness of the Ig test system or that a performance standard is not needed to provide such assurance.

7. Two petitioners comment on a 1979 problem definition study performed by Franklin Research Center for FDA (Ref. 3). The petitioners argue that this study establishes that laboratory performance on immunoglobulin determination is improving and that the commercial kits that would be subject to any performance standard established under section 514 of the act are not the source of the interlaboratory variability.

The Panel did not address this issue.

FDA disagrees with the petitioners. As discussed in paragraphs 1 and 6 of this notice, CAP survey data gathered since 1979 and reviewed by Ritchie and Rippey (Ref. 1) show that significant differences continue to exist in the performance of various manufacturers' Ig test system products. The authors also reviewed the 1980 CDC Immunochemistry Proficiency Testing Summary Analysis (Ref. 2), which found distinct differences in accuracy and precision according to measurement method. The CAP survey data (1979 through 1981) and the CDC data (1980) were obtained during and after the date of preparation of the problem definition study cited by the petitioners and show that problems in variability in performance continue to exist with Ig test systems. A performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the Ig test system.

8. Each of the five petitioners argues that proficiency testing is an alternative to performance standards for identifying and eliminating unsafe or ineffective devices. The petitioners submitted data from 1982 CAP proficiency surveys and an article by Ritchie and Rippey (Ref. 1) to support their argument. According to the petitioners, a review of current programs reflects improved agreement as compared to the data FDA cited in the preamble to its 1980 proposal to classify the Ig test system into class II (see 45 FR 27334–27336).

The Panel noted that proficiency testing is done primarily to measure laboratory competence and not to examine reagent performance. Moreover, as stated in paragraph 6 of this notice, the Panel believes that the proficiency data reflect significant differences in interlaboratory agreement and in the performance of various manufacturers' Ig test systems.

FDA agrees with the Panel and concludes that the petitioners have not provided sufficient valid scientific evidence showing why the Ig test system should not remain in class II or that the general controls provided by class I will provide reasonable assurance of the safety and effectiveness of the Ig test system. Moreover, even if the data submitted by the petitioners demonstrate improved performance of the device, that alone does not demonstrate that the general controls are sufficient to provide reasonable assurance of safety and effectiveness, because the petitioners have not demonstrated that the improved performance is satisfactory and would continue through the application of general controls only. As stated in paragraphs 1, 2, and 3 of this notice, FDA believes that the safety and effectiveness of the Ig test system cannot reasonably be assured by the general controls alone.

References

A copy of the petitions, the transcript of the Panel meeting, and the following references are on public file under the docket number found in brackets in the heading of this notice and available for inspection in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ritchie, R. F. and J. H. Rippey, "Performance on Immunoglobulin IgG, IgA, and IgM Tests in CAP Survey Specimens," *American Journal of Clinical Pathology*, 78:4:Supplement, 644–650, 1982.

2. Taylor, R. N., "Proficiency Testing Summary Analysis, Immunochemistry 1980 I (Corrected)," Centers for Disease Control, Atlanta, pp. 3–6, 1980.

3. Montgomery, P. C. and J. DiGiacomo, "Immunoglobulin Measuring Systems," Franklin Research Center, NTIS PB 80 216112, 1979.

4. Gilliland, B. C. and M. Mannik, "Immunologic Quantitation of Proteins in Serum, Urine, and Other Body Fluids," *in* "Laboratory Diagnosis of Immunologic Disorders," Edited by G. N. Vyas, D. P. Stites, and G. Brecher, Grune and Stratton, New York, pp. 13–30, 1975.

5. Berne, B. H., "Differing Methodology and Equations Used in Quantitating Immunoglobulins by Radial Immunodiffusion—A Comparative Evaluation of Reported and Commercial Techniques," *Clinical Chemistry*, 20(1):61–69, 1974.

6. Center for Disease Control, "Proficiency Testing Summary Analysis, Diagnostic Immunology," U.S. Department of Health, Education, and Welfare, Public Health Service, Atlanta, April 1978.

7. Davis, N. C. and M. Ho, "Quantitation of Immunoglobulins," *in* "Manual of Clinical Immunology," Edited by N. R. Rose and H. Friedman, American Society of Microbiology, Washington, DC, pp. 4–16, 1976.

8. Rowe, D. S., B. Grab, and S. G. Anderson, "An International Reference Preparation for Human Serum Immunoglobulins G, A, and M: Content of Immunoglobulins by Weight," *Bulletin of the World Health Organization*, 46:67–79, 1972.

9. Reimer, C. B., et al., "Collaborative Calibration of the U.S. National and the College of American Pathologists Reference Preparations for Specific Serum Proteins."

American Journal of Clinical Pathology, 77:1, 13–19, 1982.

Order

For the reasons set out above, FDA is issuing an order under section 514(b)(2) of the act denying the petitioners' requests for reclassification of the immunoglobulins A, G, M, D, and E immunological test system from class II into class I.

In accordance with § 861.20(c), FDA will continue the procedure by which a performance standard for the immunoglobulins A, G, M, D, and E immunological test system may be established. In a future issue of the **Federal Register**, the agency will publish an invitation for standards under section 514(c) of the act.

Dated: December 24, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–15 Filed 1–2–85; 8:45 am]

BILLING CODE 4160–01–M

federal register

Thursday
January 3, 1985

Part V

Department of Energy

Office of the Secretary

Intent To Construct a Third 500-kV AC Line to the Pacific Northwest-Southwest Intertie; Announcement of Public Comment Forum; Opportunity to Comment on Memorandum of Understanding

DEPARTMENT OF ENERGY

Intent To Construct a Third 500-kV AC Line to the Pacific Northwest-Southwest Intertie; Announcement of Public Comment Forum; Opportunity to Comment on Memorandum of Understanding

AGENCY: U.S. Department of Energy.

ACTION: Announcement of public comment forum and opportunity to comment on a Memorandum of Understanding between participants in the construction of a third 500-kV AC line to the Pacific Northwest-Southwest Intertie.

SUMMARY: In order to assure that all interested entities will have a final opportunity to comment on the proposed implementation plan for construction of a new 500-kV AC transmission line, notice is hereby given that the Department of Energy will hold a public comment forum and also accept written comments on a Memorandum of Understanding negotiated by the major utilities in California.

SUPPLEMENTARY INFORMATION: Title III of the Energy and Water Development Appropriations Act for Fiscal Year 1985 (Pub. L. 98-360) authorizes the Secretary of Energy to "construct or participate in the contruction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California, and to accept funds contributed by non-federal entities for that purpose." H. Rept. No. 98-866, the Conference Report accompanying H.R. 5653 which became Pub. L. 98-360, states in part:

> Investor owned, and publicly owned utilities in California have assured Congress that they will enter into good faith negotiations concerning their participation in the development of a new 500-kv AC line. The conferees interpret these assurances to mean necessarily that all parties will cooperate in the distribution of power to the ultimate consumers. The Secretary shall participate with these non-federal entities both in their negotiations and in development of the new line.

As directed by the Congress, the Department of Energy has participated in negotiations associated with the development of the conceptual approach to the Project. In order to assure that every entity which might be interested was made aware of the Project, the Department of Energy, through the Western Area Power Administration, published in the **Federal Register** on August 6, 1984, a request for statements of interest in participating in the new transmission line. There was a substantial level of interest expressed in responses both by utilities in California and those in other states. Some non-utilities also responded.

In order to move the Project along as swiftly as possible in a directed and coordinated fashion, and yet without dictating terms to any participating entities, the major utilities in California were urged by my personal representative, Mr. Stanley W. Hulett, to meet, negotiate, and create appropriate arrangements for development of the Project. These utilities proceeded on a rapid schedule to create a plan to develop the Project consistent with the legislation, and have, in consultation with the Department of Energy, reached agreement on a Memorandum of Understanding (MOU) for implementation of the project plan. That MOU, including a proposed capacity allocation schedule, is being published here with for review and comment.

Dates and Location

A public comment forum will be held from 10 am to 4 pm on January 25, 1985, in the California Energy Commission's First Floor Hearing Room at 1516 9th Street, Sacramento, California. The public comment forum will be held in accordance with the Administrative Procedures Act and the Department of Energy Organization Act and will not be adjudicatory in nature. If an entity does not want to present written comments at the public information forum, the comments may be mailed to the address given below. In order to be considered all comments must be received at this address within 30 days of publication of this notice.

FOR FURTHER IMFORMATION CONTACT: Stanley W. Hulett, Director, California Energy Project, Office of the Secretary, Department of Energy, 333 Market Street, San Francisco, California 94105, (916) 484-5251.

Issued in Washington, D.C., December 24, 1984.

Donald Paul Hodel,

Secretary of Energy.

Memorandum of Understanding California-Oregon Transmission Project

This Memorandum of Understanding (MOU) is entered into as of the 19th day of December, 1984 by (1) the CITY OF ANAHEIM (Anaheim), CITY OF AZUSA (Azusa), CITY OF BANNING (Banning), CITY OF COLTON (Colton), CITY OF RIVERSIDE (Riverside), and CITY OF VERNON (Vernon) collectively referred to as "Southern California Public Agencies"; (2) CALIFORNIA DEPARTMENT OF WATER RESOURCES (CDWR); (3) PACIFIC GAS AND ELECTRIC COMPANY (PG&E) SAN DIEGO GAS AND ELECTRIC COMPANY (SDG&E), and SOUTHERN CALIFORNIA EDISON COMPANY (SCE), collectively referred to as "Investor-Owned Utilities"; (4) the WESTERN AREA POWER ADMINISTRATION (Western); and (5) the TRANSMISSION AGENCY OF NORTHERN CALIFORNIA (Agency) (composed of the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, the Plumas-Sierra Rural Electric Cooperative, the Sacramento Municipal Utility District, the Modesto Irrigation District, and the Turlock Irrigation District), hereinafter sometimes referred to individually as "Participant" and collectively as "Participants", and the LOS ANGELES DEPARTMENT OF WATER AND POWER ("LADWP"), representing itself and the Cities of Glendale, Burbank and Pasadena, a non-voting member of the Management Committee.

Recitals

Whereas, the Agency, the Investor-Owned Utilities, CDWR and Western, have carried out studies related to possible alternative methods of developing additional transmission facilities between California and the Pacific Northwest, and

Whereas, Pub. L. 98-360 and the Conference Report on H.R. 5653 authorize the Secretary of Energy (Secretary) to participate with non-federal entities in developing the California-Oregon Transmission Project (Project) by upgrading certain facilities and authorize the Secretary to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California, and to accept and use funds contributed by non-federal entities, including investor-owned and publicly owned utilities, for that purpose, and

Whereas, pursuant to the mandate set forth in the Conference Report on H.R. 5653 and Pub. L. 98-360, the Secretary is directed to enter into negotiations with all interested non-federal entities for the financing, planning and construction of a new 500-kV AC line and associated facilities, and

Whereas, the Secretary has met with the Participants and others and has conferred in and observed the negotiation of this MOU by the Participants, and

Whereas, the Agency, the Southern California Public Agencies, the Investor-Owned Utilities, Western and the

CDWR have all participated in the negotiations and in the development of the Project, and

Whereas, the Project, when constructed, will parallel in part the DC line between California and the Pacific Northwest, and the operation of the Project may affect the operation of the DC line, and for that reason, the Participants have invited LADWP, the operator of the DC line, to be a member of the Management Committee to the extent set forth in this MOU, and

Whereas, the Project has been evaluated from the technical viewpoint and has been found to be technically feasible, and

Whereas, utilities in the Pacific Northwest and in California have determined that development of the Project will provide mutual benefits to their respective regions, and

Whereas, the Participants will develop the Project consistent with applicable environmental laws, in an expeditious manner, and

Whereas, in order to develop the Project in accordance with this MOU, the Participants intend to take all appropriate actions including the negotiation and execution of a definitive participation agreement, and other agreements as necessary, within nine months or as soon as practicable after execution hereof, and

Whereas, CDWR and the Participants have agreed to postpone the date upon which CDWR will first be entitled to exercise its rights to buy 6.25 percent of Project transfer capability, and

Now Therefore, in order to expedite the signing of the Participation Agreement and other necessary agreements, the following Principles are hereby agreed to and shall be implemented in such agreements.

1.0 Scope of Project

1.1 The Project includes:

1.1.1 The construction of a new 500-kV AC transmission line from the California-Oregon border area to the Redding area.

1.1.2 Reconstruction of an existing double circuit 230-kV AC line owned by Western to a single circuit 500-kV AC line from the Redding area to the Tracy Substation.

1.1.3 Construction of a new 500-kV AC line from Tracy Substation to Tesla Substation.

1.1.4 Construction of a 500-kV AC cross-tie from the Redding area to Round Mountain Substation or its vicinity, unless the Management Committee determines that such cross-tie is not needed.

1.1.5 Construction of a 500-kV substation in the Redding area. The size, location, and configuration shall be as determined by the Management Committee.

2.0 Associated Facilities

2.1 The Project does not include facilities south of the Tesla Substation, however, PG&E shall upgrade or improve portions of its transmission system between Tesla Substation and Midway Substation as necessary to provide firm power transfer capability to meet its obligations hereunder as set forth in Sections 2.2, 2.3 and 2.4.

2.2 PG&E shall provide firm bi-directional transmission service over its facilities between Tesla and Midway Substations for the Southern California Public Agencies, SCE and SDG&E in amounts equal to their respective transfer capabilities in the Project (whether obtained under section 5 or section 10) for the life of the Project. PG&E shall also provide up to 50 MW of firm bi-directional transmission service between Tesla amd Midway Substations for transmission entitlement that may be assignable by SMUD pursuant to Section 9.0. PG&E shall not be obligated to provide firm transmission service in excess of 700 MW for power transmitted over Project facilities and SMUD's 50 MW of assignable entitlement, provided, that such transmission service shall be provided under reasonable rates, terms and conditions.

2.3 In addition to firm transmission service provided pursuant to Section 2.2, PG&E shall make available to the Agency for the life of the Project up to 300 MW of firm bi-directional transmission service between Tesla Substation and Midway (150 MW for the M–S–R San Juan Project, plus an additional 150 MW). The Agency shall, if requested to do so by PG&E, provide, in the form of a contribution in aid of construction, a reasonable and proportionate share of the capital required for increasing the transfer capability between Los Banos and Gates. Such transfer capability is to be developed by PG&E and will be available for service no later than January 1, 1990 and shall be provided under reasonable rates, terms and conditions.

2.4 Project Participants agree to cooperate in developing suitable transmission facilities to deliver power transmitted over the Project to the Participants, or to provide acceptable firm transmission service arrangements for such power under reasonable rates, terms and conditions.

2.5 SCE agrees to provide firm bi-directional transmission service between Midway Substation and the Southern California Public Agencies of power available over the Project's facilities, consistent with the provisions of applicable individual integrated operating agreements and settlement agreements between such agencies and SCE or any successor agreements. If SCE and any such agency cannot agree upon the terms and conditions of such a firm transmission service agreement hereunder, SCE will make a unilateral filing with the FERC of such a firm transmission service agreement under Section 205 or 206 of the Federal Power Act and pursuant to the FERC's rules and regulations promulgated thereunder.

3.0 Project Rating Interconnection and Operation

3.1 Project shall be designed to have a minimum transfer capability of 1600 MW including loop flow from the California-Oregon border to the Tesla Substation and a minimum of 1900 MW of transfer capability from the Redding Substation to the Tracy Substation. The actual Project transfer capability will be determined from time to time by the Management Committee based on studies. The Management Committee has the right to review and approve all modifications to the Project, provided that any modification which materially affects the transmission system of a Participant shall require the prior approval of such Participant.

3.2 The Project shall be interconnected and operated in parallel with the existing AC Intertie facilities.

3.3 The Participants shall enter into appropriate contractual arrangements:

3.3.1 With Northwest utilities to interconnect the Project with the Pacific Northwest transmission system such that access is available to a wide spectrum of utilities in the Pacific Northwest and Canada. Agreement shall be among the Participants and Northwest utilities.

3.3.2 With PG&E and Western for interconnections between the Project and Western and PG&E systems, including provisions governing the ownerships, including provisions governing the ownership of new facilities in existing substations.

3.3.3 Providing that each Participant shall have a right to displace Northwest imports scheduled by other Participants over the Project for delivery and use within a control area at times when any Participant in such control area is in a spill condition or at minimum generation, provided that displacement energy is delivered to the Participant whose energy is being displaced at a cost including penalties, if any, at or below the price of the displaced Northwest imports.

3.3.4 For the interconnection and parallel operation of the Project with existing AC Intertie facilities. Such arrangements shall also provide for integration of the Project with the existing AC Interties System, including pro rata sharing of available transfer capability under outage and curtailment conditions, including curtailments due to loop flow.

3.4 PG&E shall be the operating agent for operation and maintenance of the Project, with operation and maintenance of cost to be shared by Project Participants in proposition to their respective allocations under these Principles. PG&E shall coordinate with Western on the operations and maintenance on the Redding to Tracy portion of the Project.

3.5 All Participants who receive transfer capability from the Project shall coordinate schedules with PG&E.

4.0 Project Management

4.1 A Management Committee, chaired by a representative of the Agency, is hereby formed to oversee and approve the planning, design, construction, operation and maintenance of the Project. Each Participant in the Project shall have representation on the Management Committee, with the members of the Agency being represented by the Agency and the Southern California Public Agencies being represented by one Participant of their choice. All actions or decisions by the Management Committee shall be by agreement of at least 75 percent interest of the voting Participants, based on Project Participation shares between the California-Oregon border area and Tesla Substation. Subcommittees shall be formed as needed to address specific aspects of the Project. CDWR, prior to exercise of rights under Section 8.1, and LADWP shall also have non-voting representation on the Management Committee. Each Participant, including each of the members of the Agency and each of the Southern California Public Agencies, shall be given advance notification of all meetings of the Management Committee and may attend meetings.

4.2 Western shall be the lead agency for the NEPA process and the Agency shall be the lead agency for the CEQA process. All Participants agree to cooperate and support the processes necessary to obtain all necessary permits from regulatory agencies having jurisdiction.

4.3 The Agency shall be the overall Project Manager. Western, under contract to the Participants, shall be responsible for design and construction of the upgraded Western facilities, including the proposed Redding Substation. The Agency and/or PG & E, under contract to the Participants, shall be responsible for design and construction of all Project facilities other than Western upgraded facilities.

4.4 In exercising its non-voting representation on the Management Committee, LADWP may represent the ownership interests of itself, Burbank, Glendale and Pasadena in the DC line only as to discussions relating to operation of the DC line, and its representation shall be limited to offering non-binding suggestions as to planning, construction, and operation of the Project, and advising the Committee as to problems which may arise through operation of the Project, in parallel with the DC line.

5.0 Project Participation Shares

5.1 The Participants shall be entitled to Project transfer capability between the California-Oregon border area and Tesla Substation prior to January 1, 2005, in the following proportions:

5.1.1 The Agency shall be entitled to 43.75 percent.

5.1.2 The Investor-Owned Utilities shall be entitled to 42.19 percent.

5.1.3 The Southern California Public Agencies shall be entitled to 7.81 percent.

5.1.4 Western for DOE laboratories and federal wildlife refuges shall be entitled to 6.25 percent.

5.2 If CDWR exercises its rights and purchases its share of the Project pursuant to Section 8.1, then the Participants shall be entitled to Project transfer capability between the California-Oregon border area and Tesla Substation commencing on January 1, 2005, in the following proportions:

5.2.1 The Agency shall be entitled to 40.83 percent.

5.2.2 The Investor-Owned Utilities shall be entitled to 39.38 percent.

5.2.3 The Southern California Public Agencies shall be entitled to 7.29 percent.

5.2.4 Western for DOE laboratories and federal wildlife refuges, shall be entitled to 6.25 percent.

5.2.5 The CDWR shall be entitled to 6.25 percent.

5.3 If CDWR elects not to exercise its rights to purchase Project transfer capability pursuant to Section 8.1, then the Participants shall continue to be entitled to Project transfer capability in the same percentages as specified in Section 5.1.

5.4 The Project transfer capability specified to Western in Sections 5.1, 5.2, and 5.3, is to serve DOE laboratories and federal wildlife refuges unless they make other arrangements with Western or other Participants. In addition, Western shall be provided the following transfer capability in Project facilities between Redding Substation and Tracy Substation:

5.4.1 300 MW under all operating conditions, with back up service provided by PG & E pursuant to Contract 14-06-200-2948A (Contract 2948A).

5.4.2 Up to an additional 300 MW (above 1900 MW), to the extent that such transfer capability is available from the Project.

5.5 During construction of the Project, to the extent transmission capacity is available, PG & E will accept CVP power at any point of interconnection between PG & E and Western for delivery to PG & E or to Western loads served from PG & E's system pursuant to Contract 2948A. Any incremental costs incurred by Western because of the outage of its facilities during construction, including wheeling charges paid to PG & E, shall be deemed to be a Project cost.

6.0 Project Financing Responsibility

6.1 Prior to the effective date of any election by CDWR to exercise its rights pursuant to Section 8.1 and unless otherwise agreed pursuant to Section 6.3, the Participants shall be responsible for financing the Project and betterments in the following proportions:

6.1.1 The Agency, 46.67 percent (approximately 700/1500);

6.1.2 The Investor-Owned Utilities, 45.00 percent (approximately 675/1500);

6.1.3 The Southern California Public Agencies, 8.33 percent (approximately 125/1500).

6.2 Subsequent to the effective date of election by CDWR to exercise its rights pursuant to Section 8.1, and unless otherwise agreed pursuant to Section 6.3, the Participants shall be responsible for any capital betterments fort the Project in the following proportions:

6.2.1 The Agency, 43.55 percent;

6.2.2 The Investor-Owned Utilities, 42.00 percent;

6.2.3 The Southern California Public Agencies, 7.78 percent;

6.2.4 CDWR, 6.67 percent.

6.3 A Participant may agree to assume (in part or whole) financing responsibility for another Participant's share. Such assumption shall not alter the Project Participation shares in Section 5.

7.0 Project Ownership

7.1 Except as otherwise agreed by the Participants pursuant to Section 7.6, the Project, other than the upgraded Western facilities, shall be owned in the following proportions prior to January 1, 2005, and also thereafter, if CDWR does not exercise its rights pursuant to Section 8.1.

7.1.1 The Agency, 46.67 percent.

7.1.2 The Investor-Owned Utilities, 45.00 percent.

7.1.3 The Southern California Public Agencies, 8.33 percent.

7.2 If CDWR exercises its rights to purchase Project transfer capability pursuant to Section 8.1, then except as otherwise agreed by the Participants pursuant to Section 7.6., the Project (other than the upgraded Western facilities) shall be owned in the following proportions after January 1, 2005:

7.2.1 The Agency, 43.55 percent.

7.2.2 The Investor-Owned Utilities, 42.00 percent.

7.2.3 The Southern California Public Agencies, 7.78 percent.

7.2.4 The CDWR, 6.67 percent.

7.3 Unless prohibited by law or unless otherwise agreed pursuant to Section 7.6, the upgraded Western facilities shall be owned in the following proportions prior to January 1, 2005:

7.3.1 The Agency, 36.84 percent (700/1900).

7.3.2 The Investor-Owned Utilities, 35.53 percent (675/1900).

7.3.3 The Southern California Public Agencies, 6.58 percent 125/1900).

7.3.4 Western, 21.05 percent (400/1900).

7.4 Unless prohibited by law or unless otherwise agreed pursuant to Section 7.6, the upgraded Western facilities shall be owned in the following proportions on and after January 1, 2005, if CDWR exercises it rights to purchase pursuant to Section 8.1.

7.4.1 The Agency, 34.39 percent (approximately 653/1900).

7.4.2 The Investor-Owned Utilities, 33.16 percent (approximately 630/1900).

7.4.3 The Southern California Public Agencies, 6.14 percent (approximately 117/1900).

7.4.4 Western, 21.05 percent (400/1900).

7.4.5 CDWR, 5.26 percent (100/1900).

7.5 If CDWR elects not to exercise its rights pursuant to Section 8.1, then the proportions owned on and after January 1, 2005, shall be as specified in Section 7.3.

7.6 A Participant may agree to assume ownership of all or part of another Participant's ownership share and provide firm transmission service to such other Participant in an amount that the Participant's ownership share plus transmission service hereunder shall equal the Participant's Project participation share in Section 5.

8.0 Rights for the California Department of Water Resources

8.1 Effective January 1, 2005, CDWR will have a right to buy pro rata from all Participant's, except Western, 6.25 percent of the Project as the Project exists as of the date CDWR exercises its right. Unless another price is mutually agreed to by the selling Participant and CDWR, CDWR shall pay each selling Participant the original construction cost (including the original construction cost associated with Western's entitlement), including the interest it incurred during construction, plus the original cost of capital improvements and betterments (including the original cost of capital improvements and betterments, associated with Western's entitlement), including interest it incurred during construction, allocable to the respective pro rata share of the Project that the Participant is selling to CDWR. Within one year after the Project is energized, each Participant shall provide CDWR with a statement of the original construction cost (including the original construction cost associated with Western's entitlement), including the interest it incurred during construction for its share of the Project so that CDWR can determine the cost it shall be obligated to pay such Participant if it exercises its rights under this Section 8.1. Within one year after any capital improvements or betterments are completed prior to the date of exercise by CDWR, each Participant shall provide CDWR with a statement of construction costs incurred for such capital improvements, or betterments (including the original construction cost of capital improvements and betterments associated with Western's entitlement) including interest it incurred during construction with respect to its share, so that CDWR can determine the cost it shall be obligated to pay such Participant if it exercises its rights under this Section 8.1.

8.2 Subject to (1) satisfaction of Section 11.4 of this MOU as to participation of PGandE in the Project, (2) execution by CDWR of the participation agreement, and (3) construction of the Project, the term of the Extra High Voltage Contract, dated August 1, 1967, among CDWR, PGandE, SDG&E, and SCE, or the successor(s) in interest to SDG&E and SCE, shall be extended for the useful life of the existing AC Intertie. Notwithstanding any terms to the contrary in the Extra High Voltage Contract, if the Parties cannot reach agreement on the rates that CDWR is to pay during the extended term of this contract, after 2004 PGandE, SCE, and SDG&E, or the successor(s) in interest to SDG&E and SCE, may unilaterally make application to FERC for a change in rates, under Section 205 of the Federal Power Act and pursuant to the FERC's Rules and Regulations promulgated thereunder.

8.2.1. CDWR shall be considered a Participant for the purposes of Sections 3.3.3 and 10.4.

8.3 Upon exercise of CDWR's rights under Section 8.1, PGandE and SCE shall provide firm transmission capacity to deliver CDWR's 100 MW to Midway and Vincent Substations, under reasonable rates, terms, and conditions.

8.4 Except as provided in Section 8.2, nothing in this agreement shall modify or change CDWR's rights under the Extra HIgh Voltage Agreement dated August 1, 1967.

9.0 The EHV Contract between SMUD, PGandE, SCE, and SDG&E

9.1 PGandE, SCE, and SDG&E, pursuant to Article 33 of the August 1, 1967 contract entitled "Contract Between California Companies and Sacramento Municipal Utility District for Extra High Voltage Transmission and Exchange Service" between SMUD, PGandE, SCE, and SDG&E (EHV Contract), consent to an assignment by SMUD of up to 50 MW of SMUD's 200 MW entitlement pursuant to the EHV Contract to California publicly owned utilities on such terms as may be negotiated between SMUD and the California publicly owned utilities; provided, however that such terms shall be consistent with, shall not amend, and shall not interfere with the performance of any rights or obligations under the EHV Contract. Such assignment may commence on January 1, 1985 and shall terminate on the earliest to occur of, (1) the date when the California-Oregon Transmission Project becomes operational, (2) the date when the participation of PGandE, SCE, and SDG&E is terminated because the approvals under Section 11.4 cannot be obtained or because those approvals are unsatisfactory to PGandE, SCE, and SDG&E, (3) the date when the Project is terminated prior to its operation, such a termination to be deemed to have occurred on January 1, 1993, if no work has been done on the Project for three years prior to that date. Such an assignment shall not impair SMUD's right to utilize any assigned entitlement after termination of the assignment.

10.0 Layoff Arrangements

10.1 The Agency shall lay off on a firm basis 50 MW of Project transfer capability to the Southern California Public Agencies between 1990 and 1994. The Agency shall lay off on a firm basis 25 MW of Project transfer capability to the Southern California Public Agencies between 1995 and 1999.

10.2 The Agency shall lay off on a firm basis Project transfer capability to the Investor-Owned Utilities, as indicated below:

1990: 200 MW
1991: 175 MW
1992: 150 MW
1993: 125 MW
1994: 100 MW
1995: 75 MW
1996: 50 MW
1997: 25 MW
1998 and thereafter: 0 MW

10.3 Layoff of Project transfer capability pursuant to Sections 10.1 and 10.2 shall be sold at the cost of said transfer capability based on public financing plus contingencies of 25 percent. It is recognized that the layoff amounts set forth in Sections 10.1 and 10.2 will be converted to a percentage of the minimum design transfer capability of 1600 MW and applied to the actual transfer capability determined by the Management Committee.

10.4 An important goal of the Project is to benefit the Participants and their respective ratepayers, commensurate with the risks inherent in the Project. To the extent that any Participant does not need its Project transfer capability to meet the loads of its system (directly or by exchange) and its firm layoff requirement pursuant to Sections 10.1 and 10.2 hereunder, such remaining transfer capability shall be made available to the other Participants.

10.4.1 Long-term transfer capability is transfer capability for which a five-year advance notice is required. Short-term transfer capability is transfer capability for which less than five years notice is required.

10.4.2 Layoff transfer capability as specified in Section 10.4 shall be made available on a cost basis. Long-term transfer capability shall be offered at no less than the cost of transfer capability based on public financing plus contingencies of 25 percent. Short-term transfer capability shall be offered at no less than the cost of transfer capability based on public financing with no contingency added.

10.4.3 If there are no Participants wishing to purchase either long-term or short-term layoff at the applicable price pursuant to Section 10.4.2, then the selling Participant can use its excess transfer capability to deliver power to a Participant or to other entities under any terms and conditions or make its Project transfer capability available to others.

10.5 Nothing in Section 10.4 shall prevent any Participant from utilizing its Project transfer capability to transmit power to other Participants or entities in the Northwest.

11.0 Approval by the Secretary of Energy, Congress and other Governmental Agencies

If, after a public notice procedure and due deliberation by the Secretary, this MOU is adopted by the Secretary as the basis for development of the Project, the Participants agree as follows:

11.1 This MOU shall be submitted by the Secretary in his report to Congress, pursuant to Pub. L. 98-360.

11.2 The Participants shall support the passage of legislation in the form attached hereto as "Exhibit A", authorizing the implementation of the Project in accordance with this MOU. The Participants shall also support report language accompanying such legislation in the form attached as "Exhibit B", which determines that the plan for development and operation of the Project in accordance with this MOU is in the public interest.

11.3 Contracts among the Participants shall then be negotiated to implement these principles. As a condition of execution of any contracts implementing this MOU each Participant shall furnish the other Participants with a written Opinion of Counsel in which it is represented that said Participant has the authority to enter into such contracts and to be bound by the terms and conditions thereof. In the case of Agency, each major member agency thereof shall furnish such Opinion of Counsel.

11.4 The contracts negotiated to implement these Principles shall be submitted to, and shall be subject to satisfactory approvals and permits of, local, state and federal governmental agencies having jurisdiction over the Participants to the contracts or the actions contemplated here.

11.5 If the conditions in Section 11.4 are not satisfied as to any Participant, without changes or new conditions unacceptable to such Participant, such Participant shall no longer be bound by any provision of this MOU.

12.0 Signature Clause

The signatories to this MOU represent that they have been appropriately authorized to enter into this MOU on behalf of the Party for whom they sign. This MOU may be executed in counterparts. This MOU is executed as of the 19th day of December, 1984.

City of Anaheim
By: _____
Date: _____

City of Azusa
By: Eugene F. Moses,
Dated: December 18, 1984.

City of Banning
By: Eldridge Sinclair.
Dated: December 19, 1984.

City of Colton
By: Albert Huntoon,
Dated: December 19, 1984.

City of Riverside
By: _____
Dated: _____

City of Vernon
By: Leonis C. Malburg,
Dated: December 18, 1984.

California Department of Water Resources
By: David N. Kennedy,
Dated: December 14, 1984.

Pacific Gas and Electric Company
By: Barton W. Shackelford.
Dated: December 18, 1984.

San Diego Gas and Electric Company
By: R.W. Watkins,
Dated: December 18, 1984.

Southern California Edison Company
By: Edward A. Myers Jr.,
Dated: December 18, 1984.

Western Area Power Administration
By: William H. Clagett,[1]
Dated: December 19, 1984.

Transmission Agency of Northern California
By: Archer Pugh,
Dated: December 19, 1984.

Los Angeles Department of Water and Power
By: _____
Dated: _____

"Exhibit A"

Suggested Legislation

The Secretary of Energy is authorized to cause the construction of a third AC transmission line from the Pacific Northwest to California in accordance with a Memorandum of Understanding submitted by the Secretary pursuant to Pub. L. 98-360.

"Exhibit B"

Suggested Report Language in Appropriations Legislation in Both Houses or Conference

The Secretary has, pursuant to Pub. L. 98-360, reported a conceptual plan for

[1] Subject to a public involvement proceeding and, after consideration of public comments, adoption of this MOU, as may be modified based on such public comments, by the Secretary of Energy.

construction of the line, which is described in detail in a Memorandum of Understanding signed by most of the privately and publicly owned utilities in California. The plan for development and operation of the new 500-kV AC line and associated facilities described in the Memorandum is in the public interest and will benefit the electric consumers of the Pacific Nowthwest and Southwest. Accordingly, the Secretary is instructed to work with the California utilities and proceed with development and operation of the Project in accordance with the Memorandum.

Anaheim Public Utilities Department

Office of The General Manager

December 18, 1984.

The Honorable Donald Paul Hodel,
Secretary of Energy, U.S. Department of Energy, Room 7A257, 1000 Independence Avenue, SW., Washington, D.C.

Subject: Memorandum of Understanding for the Third Pacific Intertie Transmission Line

Dear Mr. Secretary: This is to confirm that the City of Anaheim has been participating in the negotiations which resulted in the Memorandum of Understanding referred to above which is dated December 19, 1984. The Memorandum of Understanding will be presented for consideration to the Anaheim City Council at its next meeting which is scheduled for January 8, 1985. I intend to recommend that the City Council approve the Memorandum of Understanding.

Very truly yours,

Gordon W. Hoyt,

Public Utilities General Manager.

cc: City Manager, City Council.

Public Utilities Department

December 19, 1984.

The Honorable Donald Paul Hodel,
Secretary of Energy, U.S. Department of Energy, Room 7A257, 1000 Independence Ave. SW., Washington, D.C.

Subject: Approval of Memorandum of Understanding, California-Oregon Transmission Project

Dear Mr. Secretary: The subject memorandum of understanding (MOU) requires approval of ths Board of Public Utilities and the City Council of the City of Riverside before it can be executed by the City of Riverside.

The Utilities staff has prepared a memorandum recommending approval of the execution version of the MOU for presentation to the Board of Public Utilities and the City Council in that sequence. The Board of Public Utilities will act on the staff recommendation at its regularly scheduled meeting on January 4, 1985. The next following meeting of City Council is scheduled for January 8, 1985.

Staff knows of no reason for either the Board of Public Utilities or the City Council to reject the staff recommendation. We expect, therefore, to be able to deliver an executed copy of the MOU shortly after January 8, 1985.

Very truly yours,

Fred Kray,

Public Utilities Director.

[FR Doc. 85-140 Filed 1-2-85; 8:45 am]

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Vol. 50, No. 2

Thursday, January 3, 1985

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