6-13-85
Vol. 50 No. 114
Pages 24757-24898

Federal Register

Thursday
June 13, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement amendments to the Federal Employees Health Benefits (FEHB) law under the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615. These regulations describe the conditions under which former spouses of civil service employees and retirees may enroll in the FEHB Program.

DATES: Interim rule effective May 7, 1985. Comments must be received on or before August 12, 1985.

ADDRESS: Written comments may be sent to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044, or delivered to OPM, Room 4351, 1900 E Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 254–7052.

SUPPLEMENTARY INFORMATION: On November 8, 1984, Congress enacted the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). Under this Act, certain former spouses of civil service employees and annuitants may qualify to enroll in a health benefits plan under the Federal Employees Health Benefits Program (FEHBP) effective on or after May 7, 1985.

A former spouse who was married to an employee or retiree on or after May 7, 1985, may enroll in a health benefits plan under the FEHBP if he or she (1) does not remarry before age 55; (2) was enrolled in an FEHB plan as a family member at any time during the 18 months preceding the date of divorce or annulment; and (3) currently receives, or has future title to receive, (i) a portion of annuity payable to the employee upon retirement, based on a qualifying court order under 5 U.S.C. 8345(j), (ii) survivor annuity benefits based on a qualifying court order under 5 U.S.C. 8341(h), (iii) a survivor annuity based on an election by the employee under 5 U.S.C. 8339(j)(3), or (iv) similar benefits under another retirement system for Government employees.

Former spouses of employees who separate from Federal service before becoming eligible for an annuity beginning immediately after separation may enroll only if dissolution of the marriage to the employee occurred before the employee left Federal service.

A former spouse who was married to an employee who retired before May 7, 1985, may also be entitled to health benefits coverage if (1) the former spouse does not remarry before age 55, (2) the former spouse was enrolled in a health benefits plan as a family member at any time during the 18 months preceding the dissolution of the marriage, and either (3) the retiree elects before May 9, 1986, to provide a survivor annuity to the former spouse or, (4) the retiree declines to elect survivor benefits for a former spouse or died on or before May 7, 1985, and the former spouse satisfies certain conditions for a survivor annuity under section 4(b)(1)(B) of Pub. L. 98–615.

Generally, an eligible former spouse must file a written application for coverage within 60 days after the dissolution of the marriage. However, if the marriage dissolved *after* the employee's retirement, the former spouse may apply for coverage either within 60 days after the dissolution of marriage *or* within 60 days after the retired employee elects to provide a survivor annuity for the former spouse, whichever is later. In addition, the former spouse of an employee who retired *before* May 7, 1985, may apply for health benefits coverage (1) within 60 days after the retiree elects to provide a former spouse annuity under 5 CFR 831.621 or (2) within 60 days after the date of the OPM notice of entitlement to a former spouse annuity under 5 CFR 831.622.

A former spouse may elect a self-only or family enrollment but such family coverage is limited to the former spouse and eligible children of that spouse *and* the employee, former employee, or annuitant.

The Act requires the former spouse to pay the full cost (both the employee and Government share) of the health benefits enrollment. When the former spouse has *future* title to annuity, premium payments are to be made to the employing office of the agency which employed the Federal employee at the time the marriage was dissolved. If the former spouse is *receiving* an annuity, the responsible retirement system will make available a means for direct withholding of the premium from the former spouse's annuity check. Consistent with current regulations governing retirees and survivor annuitants, the enrollment will be terminated if the annuity is insufficient to cover the cost of the enrollment and the former spouse does not or cannot change to a plan with a cost that can be covered by the annuity.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the effective date of the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, is May 7, 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend health benefits coverage to qualified former spouses of certain service employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913.

2. Section 890.101 is amended by revising paragraphs (a)(5) and (a)(9) to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

(5) "Employing office" means the office of an agency to which jurisdiction and responsibility for health benefits actions for an employee or an eligible former spouse of an employee have been delegated. For enrolled annuitants, including survivor annuitants and former spouse annuitants who are not also eligible employees, "employing office" is the office which has authority to approve payment of annuity or workmen's compensation for the annuitant concerned. For former spouses not receiving an annuity, "employing office" is the agency that employed the Federal employee at the time the marriage was dissolved.

* * * * *

(9) "Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period" as it relates to a former spouse who is not actively receiving an annuity means the regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the former spouse have been delegated as provided by paragraph (a)(5) of this section. "Pay period" for annuitants means the period for which a single installment of annuity is customarily paid.

* * * * *

3. Section 890.104 is amended by revising paragraph (a) to read as follows:

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office or an initial decision of OPM refusing to permit registration for or change of enrollment or refusing to permit enrollment of an individual as a family member.

* * * * *

4. Section 890.301 is amended by revising paragraphs (d)(2), (e), (f), (h), (i), (k), (n), and (u) to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) * * *

(2) An enrolled employee, annuitant, or former spouse may change to another plan, another option, or from self alone to self and family, or may make any combination of these changes.

(e) *Change in family status.* (1) Other than a former spouse, an enrolled employee or annuitant may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, and an employee, if registered not to be enrolled, may register to be enrolled, at any time during the period beginning 31 days before a change in marital status and ending 60 days after the change in marital status. Other than a former spouse, an enrolled employee or annuitant may change enrollment from self alone to self and family within 60 days after any other change in family status.

(2) An enrolled former spouse may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, within 60 days after the birth or acquisition of a child who is a qualified family member under § 890.804(a) of this part.

(f) *Change to self alone.* (1) An employee, annuitant, or former spouse may register at any time to change enrollment from self and family to self alone. If an employee, annuitant, or former spouse changes his or her enrollment to self alone, any family members who lose coverage are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract.

(2) Other than a former spouse, an employee or annuitant who is covered by the enrollment of another under this part may elect self alone coverage within 31 days after a change in the covering enrollment has been filed under authority of this paragraph.

* * * * *

(h) *Move from area served by comprehensive medical plan.* If a comprehensive medical plan limits full service to a geographic area, an employee, annuitant, or former spouse enrolled in that plan who moves outside the full service area or, if already living outside the full service area, moves further from the full service area, may register at any time after the move, to be enrolled in another health benefits plan.

(i) *Termination by employee organization plan.* An employee, annuitant, or former spouse who is enrolled in a health benefits plan sponsored or underwritten by an employee organization and whose membership in the employee organization is terminated, may register to be enrolled in another plan under the following conditions:

(1) Health benefits enrollment is terminated by the plan; and,

(2) Registration to enroll in another plan is submitted within 31 days after termination of enrollment in the employee organization plan.

The employee, annuitant, or former spouse may not change enrollment from self alone to self and family under this paragraph.

* * * * *

(k) *Termination of plan in which enrolled.* If a plan is discontinued in whole or part, each employee, annuitant, and former spouse whose enrollment is thereby terminated may enroll in another plan. If the discontinuance is at the end of a contract period which is immediately preceded by an open season, the time for enrollment is the open season. Otherwise, OPM will establish a time and effective date for enrollment. Persons who fail to change enrollment within the time set are considered to have canceled the plan in which enrolled, except that if one option of a plan is discontinued, enrolled employees, annuitants, and former spouses who do not change plans will be considered enrolled in the remaining option of the plan.

* * * * *

(n) *On becoming eligible for coverage under Title XVIII of the Social Security Act.* An enrolled employee, annuitant, or former spouse with a high option enrollment may register, at any time after the 31st day before he or she is eligible for coverage under Title XVIII of the Social Security Act (Medicare), to change enrollment to the low option of any available plan under this part.

* * * * *

(u) *Child's coverage ends.* An employee, annuitant, or former spouse may register to change enrollment from self alone to self and family within 31 days after an eligible child loses coverage under another enrollment under this part.

* * * * *

5. Section 890.302 is amended by revising paragraphs (d) and (e) to read as follows:

§ 890.302 Coverage of family members.

* * * * *

(d) *Child incapable of self-support.* When an employee, annuitant, or former spouse enrolls for a family which includes a child who has become 22 years of age and is incapable of self-support, the employing office will require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 22 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability, the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the Physician and show the physician's office address. The employing office will require the employee, annuitant, or former spouse to submit the certificate on or before the date the child becomes 22 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity not timely filed.

(e) *Renewal of certificates of incapacity.* The employing office will require the employee, annuitant, or former spouse who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

* * * * *

6. Subpart H is added to read as follows:

Subpart H—Benefits for Former Spouses

Sec.

Subpart H—Benefits for Former Spouses

§ 890.801 Introduction.

This subpart explains how former spouses of Federal employees and retirees may acquire health benefits coverage in accordance with the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98-615). It describes enrollment eligibility for former spouses, coverage of family members, enrollment procedures, and when health plan coverage terminates. It also informs Federal agencies how to implement the Act.

§ 890.802 Definition.

In this subpart, "Qualifying court order" means a qualifying court order as described in § 831.1704 of this title.

§ 890.803 Who may enroll.

(a) Except as specified in paragraph (b) of this section, a former spouse is eligible to enroll in a health benefits plan under this part provided that—

(1) The former spouse whose marriage to an employee or employee annuitant is dissolved has not remarried if under age 55; and

(2) The former spouse was enrolled in a health benefits plan under this part as a family member at any time during the 18 months preceding the date of the dissolution of marriage; and

(3)(i) The former spouse was married to an employee or employee annuitant on or after May 7, 1985, and currently receives, or has future title to receive, (A) a portion of annuity payable to the employee upon retirement, based on a qualifying court order for purposes of 5 U.S.C. 8345(j), (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h), or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j)(3) (or benefits similar to those under this paragraph under another retirement system for Government employees); *or*

(ii) The former spouse was married to an employee who retired before May 7, 1985, and the employee annuitant (A) elects before May 9, 1986, to provide a survivor annuity to the former spouse under procedures prescribed in § 831.621 of this title, or (B) does not elect to provide a survivor annuity as described in paragraph (a)(3)(ii) (A) of this section, or died on or before May 7, 1985, *and* the former spouse satisfies all of the conditions for a survivor annuity in § 831.622 of this title.

(b) A former spouse of an employee who separates from Federal service before becoming eligible for immediate annuity is eligible to enroll only if the former spouse's marriage to the employee dissolved before the employee left Federal service.

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self alone or for self and family. A family enrollment covers only the former spouse and any unmarried dependent natural or adopted child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. An unmarried dependent child must be under age 22 or incapable of self-support because of a mental or physical disability existing before age 22. No person may be covered by two enrollments.

(b) *Proof of dependency.* (1) A child is considered to be dependent on the former spouse, or the employee, former employee, or employee annuitant if he or she is:

(i) A legitimate child;

(ii) An adopted child;

(iii) A recognized natural child who lives with the former spouse, or the employee, former employee or employee annuitant in a regular parent-child relationship.

(iv) A recognized natural child for whom a judicial determination of support has been obtained; or

(v) A recognized natural child to whose support the former spouse, or the employee, former employee, or employee annuitant makes regular and substantial contributions in accordance with § 890.302(b)(2).

(c) *Exclusions from coverage.* Coverage as a family member may be denied:

(1) If evidence shows that the former spouse, employee, former employee or annuitant did not recognize the child as his or her own, despite a willingness to support the child, or

(2) If evidence calls the child's paternity or maternity into doubt, despite the former spouse's, employee's, former employee's, or employee annuitant's recognition and support of the child.

(d) *Child incapable of self-support.* When a former spouse enrolls for a family enrollment which includes a child who has become 22 years of age and is incapable of self-support, the employing office shall determine such child's eligibility in accordance with § 890.302 (d), (e) and (f).

(e) *Meaning of unmarried.* A child, under age 22 or incapable of self-support, who has never married or whose marriage has been annulled, or a child who is divorced or widowed is considered to be unmarried.

§ 890.805 Enrollment time limitations.

(a)(1) Former spouses of employees who retire on or after May 7, 1985, must apply for coverage: (i) Within 60 days after dissolution of the marriage to the Federal employee or employee annuitant, or (ii) if the marriage dissolved after retirement, within 60 days after dissolution of the marriage or, if later, 60 days after the retired employee elects to provide a survivor annuity for the former spouse.

(2) Former spouses of employees who retire before May 7, 1985, must apply for

coverage: (i) Within 60 days after the employee annuitant elects to provide a former spouse annuity under § 831.621 or (ii) within 60 days after the date of the OPM notice of entitlement to a former spouse annuity under § 831.622.

§ 890.806 Effective dates of coverage.

(a) *Generally.* The effective date of enrollment or change of enrollment is the first day of the pay period after the date of receipt by the employing office of the registration form and satisfactory proof of eligibility.

(b) *Change required because of insufficient annuity.* When a former spouse annuitant changes to a lower cost enrollment as provided by § 890.301(q) of this title, the change is effective immediately upon loss of coverage under the prior enrollment.

§ 890.807 Termination of enrollment.

(a) *Former spouse.* (1) If the annuity of a former spouse is not sufficient to pay the withholdings for the plan in which enrolled, and the former spouse annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost not in excess of the annuity, the employing office will terminate the enrollment effective the end of the last period for which withholding was made. Each former spouse annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) A former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(i) Court order ceases to provide entitlement to survivor annuity or portion of retirement annuity under a retirement system for Government employees.

(ii) Former spouse remarries before age 55.

(iii) Former spouse remarries the employee, separated employee, or annuitant on whose service the benefits are based.

(iv) Former spouse dies.

(v) Employee on whose service the benefits are based dies and no survivor annuity is payable.

(vi) Separated employee on whose service the benefits are based dies before the requirements for deferred annuity have been met.

(vii) Employee on whose service benefits are based leaves Federal service before establishing title to deferred annuity.

(viii) Refund of retirement monies is paid to the separated employee on whose service the health benefits are based.

(3) A former spouse whose enrollment is terminated under this paragraph may not reenroll.

(b) *Coverage of members of the family.* The coverage of a member of the family of a former spouse terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which the individual ceases to be an eligible family member.

(2) The day the former spouse ceases to be enrolled, unless the family member is entitled, as a survivor annuitant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(c) *Cancellation.* A former spouse may cancel enrollment at any time by filing with the employing office a properly completed health benefits form. The cancellation becomes effective on the last day of the pay period after the pay period in which the health benefits form canceling the enrollment is received by the employing office. The former spouse and family members, if any, are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits. A former spouse who cancels his or her enrollment may not later reenroll.

§ 890.808 Employing office responsibilities.

(a) *Applications for benefits.* (1) The employing office will set up a method for accepting applications for enrollment and, if the former spouse is not receiving annuity, direct payment for the former spouse. The method will include procedures for verifying the eligibility requirements under § 890.803(a) (1) and (2). The employing office will accept OPM documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i) or (ii). The employing office will maintain a health benefits file for the former spouse as a file separate from the personnel records of the employee or former employee.

(2) The application from the former spouse must be filed in a manner prescribed by OPM. The former spouse will be required to certify that he or she meets the requirements listed in § 890.803 and that he or she will notify the employing office within 31 days of an event that results in failure to meet one or more of the requirements.

(b) *Qualifying court order.* Subject to a 31-day extension period for conversion, the duration of health benefits coverage will coincide with any period specified in the qualifying court order providing for an annuity. A court order not meeting the requirements under § 831.1707(c) or § 831.1709 will not be used to establish or continue entitlement to a former spouse's health benefits coverage.

(c) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues. Payment must be made in accordance with a schedule established by the employing office. If the employing office does not receive payment within 31 days after the due date, the employing office will notify the former spouse by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after the receipt of the notice. An individual who fails to remit payment within the specified time frame will be deemed to have cancelled his or her enrollment.

(2) The employing office will submit all premium payments collected from former spouses along with its regular health benefits payments to OPM. The full subscription charge for former spouses will be classified as "withholdings" and included in the "Withholding" section of the SF 2812, Journal Voucher and Report of Withholdings and Contributions For Health Benefits, Group Life Insurance, and Civil Service Retirement.

(d) Withholding from annuity. The retirement system acting as employing office for a former spouse will establish a method for withholding the full subscription charge from the former spouse's annuity check. When the annuity is insufficient to cover the full amount of health benefits premium due, the retirement system will require the former spouse to register to be enrolled in another plan as provided by § 890.301(q).

[FR Doc. 85-14322 Filed 6-12-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 348]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 348 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 14–June 20, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 348 (§ 908.648) is effective for the period June 14–June 20, 1985.

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

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on June 4, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand is slow, particularly for small size fruit, and prices are likely to decline in the next few weeks due to significant competition from deciduous fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after the publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing Agreements and Orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

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

2. Section 908.648 is added to read as follows:

§ 908.648 Valencia Orange Regulation 348.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 14, 1985, through June 20, 1985, are established as follows:

(a) *District 1:* 240,000 cartons;
(b) *District 2:* 360,000 cartons;
(c) *District 3:* Unlimited cartons.

Dated: June 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–14233 Filed 6–12–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 925

Expenses and Assessment Rate for Grapes Grown in a Designated Area of Southeastern California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures of the California Desert Grape Administrative Committee and establishes the assessment rate under Marketing Order 925 for table grapes grown in southeastern California for the 1984–85 fiscal year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: December 1, 1984–November 30, 1985.

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

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

This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Desert Grape Administrative Committee, established under the order, and upon other information. It is found that the expenses and assessment rate, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled from the beginning of such period. To enable the committee to meet current fiscal obligations, approval of the expenses and rate 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 time.

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, grapes, California.

1. The authority citation for 7 CFR Part 925 continues to read as follows:

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

2. New § 925.204 is added to read as follows (this section prescribes the annual expenses and assessment rate of the California Desert Grape Administrative Committee and will not be published in the Code of Federal Regulations):

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.204 Expenses and assessment rate.

Expenses of $38,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.003 per 22-pound container of grapes is established for the fiscal year ending November 30, 1985. Unexpended funds may be carried over as a reserve.

Dated: June 10, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-14301 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[IC-14559]

Amendment to Pricing Rule and Adoption of Rule on Pricing of Redemptions

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule and rule amendment.

SUMMARY: The Commission is adopting a rule and rule amendment under the Investment Company Act of 1940. These actions limit the days on which a registered investment company is required to price its redeemable securities to customary United States business days and provide that an investment company will not have suspended the right of redemption if it prices a redemption request by computing net asset value under the amended rule. The rule and rule amendment will simplify and clarify pricing and redemption requirements for all funds especially those with portfolio securities trading in foreign markets. The Commission also is amending staff Guidelines to Form N-1A to reflect these actions.

EFFECTIVE DATE: June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Forrest Foss, Special Counsel or Jay Gould, Attorney, (202) 272-2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 22c-1 and a new Rule 22e-2 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "1940 Act"), relating to the computation by an investment company of the value of its redeemable securities for purposes of sales and redemptions (commonly called "pricing").

The changes were proposed in Investment Company Act Release No. 14244 (November 21, 1984).[1] The amendment to Rule 22c-1 will require investment companies to price their redeemable securities at least once every week day (Monday through Friday) except on: (i) Customary national, local, or regional business holidays disclosed in the prospectus; (ii) days when no security is tendered for redemption and no customer order is received; or (iii) days when changes in the value of the investment company's portfolio securities do not affect the current net asset value of the investment company's redeemable securities. New Rule 22e-2 will make clear that an investment company is not required to price redemption requests on days when pricing is not required under Rule 22c-1.

Five commentators submitted views on the proposal and unanimously supported limiting the days on which pricing is required to customary United States business days. The commentators contended, however, that the Commission should also permit funds to forego pricing on local and regional holidays and days when emergency weather conditions cause a fund to halt operations. Commentators also argued that the disclosure conditions of the proposal were unnecessarily burdensome. As discussed below, the Commission has made several changes in the rule amendment in response to the comments. Also, in response to a technical comment, the caption of new Rule 22e-2 has been revised.

Local and Regional Holidays

Commentators unanimously supported the proposal to require pricing on weekdays only, that is, Monday through Friday. They were also supportive of the proposal to permit an investment company to forego pricing on customary United States business holidays. However, they argued that the specific term—"United States business holidays"—used in the proposal was ambiguous, and recommended that the Commission expand Rule 22c-1 to permit a fund to forego pricing on customary local and regional holidays.

Commentators cited the same administrative and financial burdens described in the proposing release with respect to Saturday and holiday pricing as justification for eliminating required pricing on local and regional holidays. It was also pointed out that local Federal Reserve wire transfer systems, banks, tranfer agents, pricing services, and other support organizations may be closed or unavailable on local holidays, making pricing on these days difficult. In addition, it was argued that investor orders which a fund receives on a local or regional holiday would be limited, in many cases (even if the fund were to remain open) to mail orders because banks are generally closed and, as a result, wire transfers cannot be received. As stated in the proposing release with regard to Saturday pricing, orders received through the mail generally do not reflect an attempt to trade on market events which occur on the day the mail order is received.

The Commission has decided to expand the amendment to include local and regional holidays among the days on which pricing will not be required. Nonetheless, an investment company which closes its facilities and decides not to price on local or regional holidays must list these holidays in its prospectus. It should also be pointed out that the amended rule prescribes minimum requirements and will not preclude an investment company from pricing its redeemable securities on local holidays or weekends.[2] A fund which chooses to calculate its net asset value on days not required by the amended rule, however, must do so consistently and for both the purchase and sale of its redeemable securities.

Disclosure

The proposal would have required investment companies to specifically state in the prospectus the holidays on which pricing would not occur. Commentators criticized this approach as burdening the prospectus with unnecessary disclosure. Instead, commentators recommended that a fund be permitted to use a more general description of its closing days in the prospectus and to place any required specific disclosure in the Statement of Additional Information. Suggestions for appropriate general descriptions of holiday policies included statements to the effect that pricing will take place "everyday the New York Stock Exchange is open" for trading, or that pricing will not be done on "days the New York Stock Exchange is closed," or on "any federal holiday." One commentator indicated that specific prospectus disclosure of holiday closings would be appropriate where the holidays went beyond those observed by the New York Stock Exchange.

The rule as adopted incorporates many of these suggestions. Although the rule requires a description in the prospectus of the customary national business holidays observed by the fund, it eliminates the requirement that all holidays be specifically listed in the

[1] 49 FR 46558 (November 27, 1984).

[2] This could be done by the investment company remaining open on weekends or on any holiday(s) or by segregatign orders received on such days for separate pricing.

prospectus. A fund could use the types of descriptions referred to above or others which convey the necessary meaning about the customary national business holidays on which orders will not be priced. Where the fund is closed on local or regional holidays, the rule requires that the prospectus contain a listing of these additional holiday closings. In the Commission's view, this specific disclosure is required because investors in areas of the country distant from a fund may not be aware of the local and regional holidays. Where the customary national business holidays on which the fund is closed are only described generally in the prospectus, they must be specifically listed in the Statement of Additional Information. If all holiday closings are specifically listed in the prospectus, the list need not be repeated in the Sfatement of Additional Information.

Three commentators addressed the statement in the proposing release that "to the extent that a fund's pricing practices may limit investor access to the fund on days when significant trading in the fund's portfolio securities may occur, the Commission would expect the fund to explain the consequences of its pricing practices in its prospectus." One commentator suggested that due to the technical nature of the information and its applicability to funds whose portfolios trade primarily on foreign markets, the disclosure should be placed in the Statement of Additional Information. Two other commentators argued that this disclosure be deleted altogether.

The Commission has considered these comments and decided that, where disclosure of the consequences of a fund's holiday closing policy on fund pricing practices is necessary, it may be in the Statement of Additional Information. Appropriate disclosure about the impact of a fund's closing policies on investors depends, of course, on the nature of the fund. For example, funds with portfolio securities primarily listed on foreign exchanges which trade on Saturdays or other customary United States business holidays would be expected to disclose to their investors, if the fund does not price on these days, that the portfolio will trade and the net asset value of the fund's redeemable securities may be significantly affected on days when the investor has no access to the fund. In other cases, where for example the fund's portfolio trades only on the New York Stock Exchange and the fund is closed only on days when that exchange is closed, the fund could forego discussion of the consequences of its closing policy on investors.

The Commission is amending guideline 28 of the Guidelines to Form N-1A to reflect the amendment to Rule 22c-1 and the foregoing disclosure requirements.[3]

Emergency Closings

In response to criticism by commentators, the Commission is clarifying the staff's position on pricing requirements when funds are closed due to emergencies such as snow storms. As indicated in the proposing release, where a fund is unable, due to emergency conditions, to complete the mechanical process of pricing on a day when it would normally be required to do so under Rule 22c-1, the price for that day may be calculated subsequently and applied to sales, redemptions, and repurchases that were in fact received in the mail or otherwise on that same day. A number of commentators recommended that Rule 22c-1 be expanded to include "emergency days" as days on which pricing need not occur. As justification, commentators cited the same administrative and financial burdens associated with weekend pricing, and also suggested that it may be difficult or impossible to discern on which day mail orders are actually received during emergency conditions.

The Commission believes that clarification of the existing staff interpretation will address the practical problem raised by commentators. Under that interpretation, a mail order is considered received by the fund if the postal service has delivered it to the fund's place of business or transfer agent on a given day even if, because of an emergency closing, neither the fund nor its transfer agent is able to perform the mechanical processing of pricing on that day. The fund is expected to make every effort to price investor orders for purchase and redemption on the day the order is actually received,[4] and to establish procedures so as to reasonably be able, following an emergency closing, to insure that investor orders can be given the price that, but for the emergency, would have been computed on the day of actual receipt.[5]

Nonetheless, if the fund is unable to segregate orders received on the emergency closed day from those received on the next day the fund is open for business, the fund may give all these orders the next price calculated after operations resume. This approach may be used where, for example, as a result of a snowstorm, local authorities declare a state of emergency, businesses are required to close, and only emergency travel is permitted. A fund relying on this exception, of course, must process purchase orders on the same basis as requests for redemption.

Effective Date

The rule and rule amendment are effective upon publication in the **Federal Register**. An investment company which determines to change its pricing practices to take advantage of the rule changes (for example, a fund with securities trading on Saturday which now will forego Saturday pricing), must amend its disclosure in accordance with applicable requirements. The staff anticipates that generally funds could make the appropriate changes by use of a "sticker" under Rule 497(d). A fund which does not change its pricing practices in response to the rule changes may make any necessary changes in its disclosure at the time it files its annual update by post-effective amendment.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendment

Part 270 of Chapter II, Title 17 of the Code of Federal Regulations is amended as follows.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54; Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89, 80a-22(c), 80a-22(e), 80a-6(c), 80a-37(a) * * *

2. Paragraph (b)(1) of § 270.22c-1 is revised to read as follows:

§ 270.22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(b) For the purposes of this section, (1) the current net asset value of any such security shall be computed no less frequently than once daily, Monday

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[3] The Guidelines to Form N-1A are a compilation of Commission releases and staff interpretations intended to assist registrants prepare registration statements and comply with applicable requirements.

[4] When orders are not processed on the day of receipt, but nonetheless use that day's price, there is a potential for dilution of the interests of the fund's other shareholders.

[5] These emergency closings are to be distinguished from situations where a fund or its transfer agent experience computer failures or other operational problems. Where operational problems unrelated to an emergency closing result in transactions being processed on an "as of" basis, the adviser, transfer agent or another responsible party may be liable to the fund for any resulting dilution.

through Friday, at the specific time or times during the day that the board of directors of the investment company sets at least annually, except on (i) days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities, (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company, or (iii) customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus;

* * * * *

3. By adding § 270.22e-2 to read as follows:

§ 270.22e-2 Pricing of redemption requests in accordance with Rule 22c-1.

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c-1.

4. Guideline 28. of Guidelines for Form N-1A, beginning at paragraph 9, is amended to read as follows:

* * * * *

Item 7 requires a statement in the prospectus as to when calculations of net asset value are generally made. The current net asset value of redeemable securities should be computed at least once each day whenever there is enough trading in the investment company's portfolio securities to materially affect the current net asset value of the investment company's redeemable securities and on which an order for purchase, redemption, or repurchase of its securities is received. Calculations of net asset values should be made at such specific time or times during the day as set by the directors of the investment company, at least once a year. An investment company need not compute net asset value on (i) a day when no order to purchase or sell such security was received or was on hand, having been received since the last previous computation of net asset value or (ii) customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus.[48]

Under Item 7, a fund must identify in a general manner or list the customary national business holidays on which it will (or will not) price. For this purpose, a fund could indicate, for example, that pricing will take place "every day the New York Stock Exchange is open for trading" or "Monday through Friday exclusive of federal holidays" or the fund may use some other general description which conveys the necessary meaning about the customary national business holidays on which orders will (or will not) be priced. A fund which will be closed on local or regional holidays must specifically list these holidays under Item 7 of the prospectus. Where national holidays on which the fund will be closed are only generally described in the prospectus, they must be specifically listed in the Statement of Additional Information. If all holiday closings are specifically listed in the prospectus, the list need not be repeated in the Statement of Additional Information.

Where a fund's closing policy may have a significant impact on investor access to the fund, this should be explained in the Statement of Additional Information under Item 19. The necessity for and appropriate level of disclosure under Item 19 depends on the nature of the fund. For example, funds with portfolio securities primarily listed on foreign exchanges which trade on Saturdays or other customary United States national business holidays would be expected to disclose to their investors, if the fund does not price on these days, that the portfolio will trade and the net asset value of the fund's redeemable securities may be significantly affected on days when the investor has no access to the fund. On the other hand, a fund need not discuss the consequences of its pricing policies if the fund's portfolio securities trade only on the New York Stock Exchange and the fund is closed only on days when that exchange is closed.

The prospectus disclosure regarding sales charges should make clear that the term "offering price" as used throughout the prospectus includes the sales charge, if any.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which the Commission prepared in accordance with 5 U.S.C. 603 regarding the amendment to Rule 22c-1 and new Rule 22e-2, was published in Investment Company Act release No. 14244. No comments were received on this analysis and the Commission has prepared a Final Regulatory Flexibility Act Analysis. Copies of the Final Regulatory Flexibility Analysis may be obtained by contacting Jay Gould in the manner specified above.

By the Commission.

John Wheeler,

Secretary.

June 6, 1985.

[FR Doc. 85-14227 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[48] Investment Company Act Release No. 10827 (August 13, 1979) [44 FR 48660 (August 20, 1979)]; Investment Company Act Release No. 14559 (June 6, 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

Job Training Partnership Act (JTPA); Single Unit Charge Agreements Involving Training of Youths

Correction

In FR Doc. 85-10181, beginning on page 16473 in the issue of Friday, April 26, 1985, make the following correction: On page 16474 in the first column, in § 629.38, the seventh line of paragraph (e)(2)(iii)(B) should have read "unsubsidized employment or the".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-37]

Special Local Regulations; Fourth of July Coney Island Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Fourth of July Coney Island Air Show. This event is sponsored by the Coney Island Chamber of Commerce. The event will be held on July 4, 1985 off Coney Island Beach, New York. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1985 from 12:30 p.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until May 29, 1985 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project

Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Fourth of July Coney Island Air Show is sponsored by the Coney Island Chamber of Commerce. The Canadian Air Force Snowbirds Jet Aerobatic Team will put on a special air show during the effective period from 1:30 p.m. to 2:00 p.m. over the waters off Coney Island in Brooklyn, New York. This show is well known to the boaters and residents alike in this area, as similar events have been held in past years. The Federal Aviation Administration requires that all vessels be kept out of the area under the flight line (show area). The Coast Guard expects a very large spectator fleet for this popular event. The regulated area is a rectangular area 6,000 feet long along the shore and extends out 3,000 feet offshore. The 2 offshore corners of the regulated area will be marked by special purpose buoys. In order to provide for the safety of both participants and spectators, the Coast Guard will close the regulated area to all traffic.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. Part 100 is amended by adding a temporary Section 100.35–318 to read as follows:

§ 100.35–318 Fourth of July Coney Island Air Show, New York.

(a) *Regulated Area.* Atlantic Ocean, off Coney Island, New York in the rectangular area north of a line connecting latitude 40 degrees 33 minutes 47.0 seconds north, longitude 73 degrees 59 minutes 22.0 seconds west and latitude 40 degrees 33 minutes 52.8 seconds north, longitude 73 degrees 58 minutes 04.0 seconds west.

(b) *Effective Period.* This regulation will be effective from 1:00 p.m. to 3:00 p.m. on July 4, 1985.

(c) *Special Local Regulations.* (1) The regulated area will be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(2) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(3) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 4, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85–14267 Filed 6–12–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 5–85–03]

Special Local Regulations: Regatta; Elizabeth River Power Boat Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Elizabeth River Power Boat Race. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. It will consist of 35 outboard powered boats 13 feet to 19 feet in length racing a triangular course at the junction of the Eastern and Southern branches of the Elizabeth River. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 12:30 pm, 21 July 1985 and terminate at 5:30 pm, 21 July 1985. In case of inclement weather causing the event to be postponed, these regulations become effective at 12:30 pm, 28 September 1985 and terminate at 5:30 pm, 28 September 1985. If the event is postponed, the Patrol Commander will issue a Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804–398–6202).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 29 April 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Cammander Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations:

The following organizations are jointly sponsoring the Elizabeth River Power Boar Race:

1. Norfolk FESTEVENTS, INC.
2. City of Portsmouth.
3. Portsmouth Power Boat Association.

The event will consist of six (06) classes of boats running two (02) heats per class. Closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations:

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A temporary paragraph is added to § 100.35 to read as follows:

§ 100.35–502 Elizabeth River, Norfolk, Virginia.

(a) *Regulated Area.* The waters of the Elizabeth River and its branches from shore to shore, bounded by the Midtown Tunnel on the north, the Downtown Tunnel on the south, and the Berkley Bridge on the east.

(b) *Special Local Regulations.* Except for participants in the Elizabeth River Power Boat Race, or persons or vessels authorized by the Coast Guard Patrol Commander, no persons or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(d) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the West side of Otter Berth, Town Point Park.

(e) The Coast Guard Patrol Commander has been authorized to stop the race to allow the transit of backed up marine traffic through the regulated area.

(f) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

Dated: May 14, 1985.

James C. Irwin,

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

[FR Doc. 85-14268 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 157

[CGD 82-28]

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tankships of 20,000 DWT or More but Less Than 40,000 DWT Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of a record of decision.

SUMMARY: The implementing regulations for the National Environmental Policy Act require a record of decision to be made available to the public for rulemakings for which an Environmental Impact Statement was filed with the Environmental Protection Agency. The Coast Guard is hereby providing notice that the record of decision for the regulations amending certain pollution prevention regulations in Title 33, Code of Federal Regulations, Part 157, in order to implement 46 U.S.C. 3705(c) and 3706(d) is available. The record of decision briefly discusses the environmental impacts of these regulations and the alternatives considered.

ADDRESSES: Copies of the record of decision may be obtained by writing: Commandant (G-CMC/21), (CGD-82-28), U.S. Coast Guard Headquarters, Washington, D.C. 20593. This document is available for examination and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR Jeffrey G. Lantz, Project Officer, (202) 426-4431.

Dated: June 10, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-14269 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 3-85-29]

Safety Zone Regulations; Vermont, Lake Champlain, Burlington Harbor

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Lake Champlain, Burlington Harbor, Vermont. This zone is needed to protect vessels from possible safety hazards associated with a fireworks display on Lake Champlain. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective on July 3, 1985 at 9 p.m. It terminates on July 4, 1985 at 12:30 a.m. (Rain date is July 4, 1985 at 9 p.m. It terminates on July 5, 1985 at 12:30 a.m.)

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York (212)-668-7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and is to be made effective in less than 30 days after **Federal Register** publication. Publishing an NRPM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG M. O'Malley, Project Officer for the Captain of the Port, and Ms. M. A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with fireworks display in the Lake Champlain.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Part 165 is amended by adding § 165.T346 to read as follows:

§ 165.T346 Safety Zone: Lake Champlain, Burlington Harbor.

(a) *Location.* The following area is a safety zone: the waters of Vermont, Lake Champlain, Burlington Harbor, within a radius of 200 yards from the city of Burlington, Vermont's south breakwater, position 44°28'21"N 73°13'32"W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 24, 1985.

A.E. Henn,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 85-14270 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 166

[CGD 81-040]

Ports and Waterways Safety, Shipping Safety Fairways, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Final Rule; Correction.

SUMMARY: This document corrects an error in the geographical description of a fairway as published in the **Federal Register** on Thursday, May 23, 1985 (50 FR 21261). In the first column of page 21263, paragraph (d)(14)(ii), Aransas Pass to Calcasieu Pass, the twenty-fourth geographical position [28°44'39", 96°04'22"] is incorrect. The correct position is [28°44'39", 95°04'22"].

FOR FURTHER INFORMATION CONTACT: Ltjg D. Reese, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202) 245–0108.

Accordingly, the Coast Guard is correcting 33 CFR 166.200 (d)(14)(ii) to read as follows:

§ 166.200 Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico.

* * * * *

(d) Designated areas * * *

(14) Coastwise Safety Fairways. * * *

(ii) *Aransas Pass to Calcasieu Pass.* The areas between rhumb lines joining points at:

Latitude	*Longitude*
27°43'00"	96°55'27"
27°44'09"	96°53'25"
27°45'22"	96°51'19"
27°51'46"	96°40'12"
28°11'24"	96°06'06"
28°12'30"	96°04'12"
28°42'24"	95°12'00"
28°44'52"	95°07'43"
28°45'58"	95°05'48"
28°47'42"	95°02'42"
29°07'42"	94°27'48"
29°10'17"	94°22'30"
29°29'30"	93°58'24"
29°32'03"	93°46'44"
29°33'00"	93°46'26"
29°32'52"	93°43'00"
29°37'32"	93°21'25"

with rhumb lines joining points at:

27°40'36"	96°55'30"
27°42'47"	96°51'39"
27°44'35"	96°48'31"
28°10'06"	96°04'42"
28°11'13"	96°02'46"
28°43'32"	95°06'18"
28°44'38"	95°04'22"
29°06'24"	94°26'12"
29°06'24"	94°23'55"
29°07'41"	94°22'23"
29°09'06"	94°20'36"
29°27'40"	93°57'18"
29°30'38"	93°43'41"
29°31'13"	93°41'04"
29°33'56"	93°28'35"
29°32'52"	93°17'00"

Dated: June 10, 1985.

R.H. Kothe,

Chief, Office of Navigation (Acting).

[FR Doc. 85–14271 Filed 6–12–85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 14

Violation of Penal Statutes

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: This final regulation amendment modifies the internal handling of Veterans Administration (VA) matters involving violations of penal laws. The creation of the VA Inspector General (IG) under the Inspector General Act (Pub. L. 95–452), agreements between the VA IG and the Department of Justice, and discussions between the Office of the VA General Counsel and the IG have made the IG a part of the criminal referral process in cases involving fraud within the VA. This amendment formalizes the IG roles. Additional changes are primarily editorial.

EFFECTIVE DATE: This regulation amendment is effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Audley Hendricks (023), Assistant General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389–5030.

SUPPLEMENTARY INFORMATION: On February 1, 1985, the VA published in the **Federal Register** (50 FR 4708–4709) a proposed amendment to 38 CFR 14.560. Interested persons were given 30 days in which to submit written comments, suggestions or objections. No comments were received during the comment period and the amended regulation is hereby being published as a final rule.

Executive Order 12291

The Administrator has determined that these regulations are non-major as that term is defined by Executive Order 12291. The proposed regulations will apply to internal Agency procedures. The regulations will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation or on the ability of the United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

The Administrator has certified that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this amendment will affect only the Agency's internal handling of matters relating to violations of penal laws. It will, therefore, have no significant direct impact on small entities (i.e., small business, small private and non-profit organizations, and small governmental jurisdictions).

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Foreign relations, Lawyers, Organization and functions (Government agencies), Tort claims, Veterans.

Approved: May 17, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 14—[AMENDED]

38 CFR Part 14, GENERAL COUNSEL, LEGAL SERVICES, is amended by revising § 14.560 and its title to read as follows:

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).

(a) Allegations of crimes against the person or property, or other non-fraudulent criminal matters will be referred by the District Counsel, within whose jurisdiction the alleged offense appears to have been committed, to the appropriate U.S. Attorney, FBI, or local law enforcement agency, according to local practice. (38 U.S.C. 210(c)(1))

(b) Allegations of fraud, corruption or other criminal conduct involving programs and operations of the VA will be referred to the Office of the Inspector General. (38 U.S.C. 210(c)(1); sec. 4, Pub. L. 95–452)

(c) The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrent prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the District Counsel will cooperate as may be requested. The District Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety. (38 U.S.C. 210(c)(1))

[FR Doc. 85–14257 Filed 6–12–85; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Increased Rates of Educational Assistance Veteran's Benefits Improvement Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations; correction.

SUMMARY: This document corrects a table published in a final rule in the **Federal Register** of May 13, 1985 concerning increased rates of educational assistance for veterans education under the Veterans' Benefits Improvement Act of 1984.

FOR FURTHER INFORMATION CONTACT: Celia Fasone (202) 389-2340.

SUPPLEMENTARY INFORMATION: This document corrects a table which appeared in FR Doc. 85-11410, as a final rule in the **Federal Register** of May 13, 1985. In the 3rd column on page 19935, a percentage increase for educational assistance allowance for correspondence courses, taken under 38 U.S.C. ch. 35, and the cite therefore were omitted when § 21.4137(a) was published. The footnotes were rearranged during GPO printing. The chart in paragraph (a) is corrected to read as set forth in this document

Dated: June 10, 1985.

Nancy C. McCoy,

Chief, Directives Management Division.

In FR Doc. 85-11410, the table in § 21.4137(a) is corrected to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses	Monthly rate
Institutional:	
Full time	$376.
¾ time	$283.
½ time	$188.
Less than ½ but more than ¼ time [1]	$188.
¼ time or less [2]	$94.
Cooperative, other than farm cooperative (full time only).	$304.
Apprentice or On-Job (full time only but see footnote 1 below) Payment designated training assistance allowance:	
First 6 months	$274.
Second 6 months	$205.
Third 6 months	$136.
Fourth 6 months and succeeding periods.	$68.
Farm cooperative:	
Full time	$304.
¾ time	$228.
½ time	$152.
Correspondence	55 percent of the established charge for number of lessons completed by eligible spouse and serviced by the school [3]. Allowance paid quarterly. (38 U.S.C. 1732, 1786, Pub. L. 97-35).

[1] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser. Eligible spouses or surviving spouses who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. Those spouses and surviving spouses who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons. (Pub. L. 97-35, sec. 2004(b)).

[3] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94 as appropriate per month, if the maximum allowance is not initially authorized (38 U.S.C 1732(c)(3); Pub. L. 95-202, Pub. L. 96-466, Pub. L. 98-543).

* * * * *

[FR Doc. 85-14234 Filed 6-12-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2849-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves a revision to the legal authority portion of the Ohio State Implementation Plan (SIP) and a site-specific SIP revision for the Southerly Wastewater Treatment Plant in Columbus, Ohio. The legal authority provision grants local governments the authority to establish air pollution control requirements that are least as stringent as those of the State, except that less stringent requirements are permitted for burning certain waste materials at construction sites. The Southerly revision reduces the amount of total suspended particulate (TSP) that will be emitted from sewage sludge incineration at the plant. The revision is in accordance with the Federal enforceability requirements of the "Emission Offset Interpretive Ruling," Appendix S, 40 CFR Part 51, (44 FR 3274; January 16, 1979). USEPA has determined that approval of these revisions will not jeopardize attainment of the TSP National Ambient Air Quality Standards.

EFFECTIVE DATE: This final rulemaking becomes effective July 15, 1985.

ADDRESSES: Copies of this revision are available at the following addresses:

U.S. Environmental Protection Agency, Regulatory Analysis Section, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of the Federal Register, 1100 L Street, NW., Washington, D.C.

U.S. Environmental Protection Agency, Public Information and Reference Unit, Room #2922, 401 M Street SW., Washington, DC 20460.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: In a September 21, 1982, **Federal Register** notice (47 FR 41584), USEPA proposed to conditionally approve the State of Ohio's overall Part D State Implementation Plan (SIP) to attain the primary and secondary TSP standards. In that notice, USEPA also proposed to approve certain legal authority portions of the SIP and a site-specific SIP revision for the Southerly Wastewater Treatment Plant (Southerly), in Columbus, Ohio. USEPA's final action today will only focus on the legal authority portions of the SIP and the site-specific revision for Southerly. USEPA did not take final action on these revisions at an earlier date because of the State's intent to submit a new draft TSP SIP to USEPA and the need for USEPA to reevaluate, at that time, whether the legal authority and Southerly revisions could be processed separately or if their approval was contingent upon the approval of the new Ohio TSP SIP. On March 18, 1985, the State submitted a new draft TSP SIP to USEPA. USEPA has determined that processing of the legal authority and Southerly revisions can be performed independently and, therefore, final action is being taken on these revisions. USEPA must propose action on the new draft TSP SIP and this will be addressed in a separate rulemaking action.

USEPA received one comment from

an environmental group regarding the proposed action taken on the legal authority portion of the SIP and that comment and USEPA's response are discussed below under Section I. No comments were received on Southerly.

I. Legal Authority—Amendment to § 3704.11 of the Ohio Revised Code

Section 11 of Chapter 3704 of Title 32 of the Ohio Revised Code (section 3704.11) is part of the Ohio SIP. As part of the SIP, it defines the enforcement and promulagation authority delegated to political subdivisions relative to the prevention, control and abatement of air pollution. Generally, it provides a political subdivision with the authority to promulgate its own ordinances or regulations provided that ". . . every such local ordinance or regulation . . . " shall include emission standards and regulations which are not less stringent than the emission standards and other regulations adopted pursuant to division (E) of section 3704.3 of the Revised Code (section 3704.3(E)).

On July 1, 1980, the Governor of Ohio submitted to USEPA, as a revision to the Ohio SIP, amended House Bill 101 (H.B. 101) which amends section 3704.11 by adding new subparagraph (C). This subparagraph expands the authority given to a political subdivision in relation to certain open burning activities. In particular, section 3704.11(C) allows a political subdivision to permit a construction contractor to burn, on the construction site, natural wood, lumber, paper, cardboard and wooden boxes. The contractor is not allowed to burn any product with a rubber or petroleum base. Section 3704.11(C) also provides a political subdivision with authority to promulgate its own rules for the issuance of a construction open burning permit. It specifically prohibits open burning during an air pollution alert, warning or emergency episode for the area of the contruction site.

According to the existing Ohio SIP, open burning of construction materials such as those allowed by section 3704.11(C) is prohibited by rules 01 through 05 of Chapter 3745–19 of the Ohio Administrative Code (Rules 3745–19–01 through 05). These rules were promulgated by the State pursuant to Section 3704.3(E) and, except for Rules 3745–19–03(D)(1) and 04(D)(1), were approved by USEPA in their entirety in the February 3, 1978 **Federal Register** (43 FR 4611). USEPA interprets Section 3704.11(C) as superseding Rules 3745–19–01 through 05 in those instances where a political subdivision either: (a) Issues an open burning permit to a contractor or (b) adopts permit regulations for such open burning activities.

Proposed Action

Approval.

Public Comments

USEPA received a public comment from an environmental group regarding the proposed approval of this rule.

Comment: The environmental group commented that, because open burning results in emissions at the ground level, this SIP revision will result in localized ground level air quality problems.

Response: Although open burning emissions will have their greatest impact in the vicinity of the burning, these emissions are not expected to lead to local exceedances of the National Ambient Air Quality Standards (NAAQS). This is because: (1) Relative emissions (compared to those of the overall area—see response to next comment) are not expected to be substantial and (2) open burning is expected to occur on an intermittent basis and mainly during the daylight hours, when air pollutant dispersion rates are generally at a maximum. Since emissions will occur mainly during daylight hours, the ground level nature of the emissions will be negated to some extent by the higher dispersion rates during these time periods. Consequently, USEPA believes that open burning emissions are unlikely to cause exceedances of the NAAQS.

Comment: Although Ohio's particulate strategy does not rely on a prohibition of open burning for demonstration of attainment, the commentor is concerned that open burning of construction waste could interfere with attainment. Additionally, the commentor feels that because the proposed Ohio TSP SIP does not demonstrate attainment of the particulate NAAQS in portions of the State, any activity that would not lead to an improvement in air quality must be disapproved.

Response: An estimate of the impact of this revision was made by considering the national per capita consumption of construction materials and estimating the emissions which would occur. Based on USEPA's estimate for an urban area of 2 million population, the annual rate of particulate emissions would be approximately 152–300 tons of particulate per year. Review of the "1977 National Emissions Report" (EPA–450/4–80–005) indicates that a major urban area has particulate emissions in the range of 37,000–350,00 tons/year. Therefore, areawide particulate emissions form open burning at construction sites will be negligible compared to the total areawide particulate emissions. Further discussion of this analysis is contained in the technical support document for this revision.

Final Action

Approval.

II. Site-Specific Revision for Southerly Wastewater Treatment Plant

On March 16, 1982, the State submitted as a SIP revision requests an operating permit for the Southerly Wastewater Treatment Plant in Columbus, Ohio. This revision reduces the allowable emissions from the source's New Source Performance Standards limit of 1.3 lbs/ton of dry sludge combusted to 1.12 lbs/ton of dry sludge combusted. The State is crediting the offset from this emission reduction to the City of Columbus Refuse-Coal Fired Municipal Electric Plant. This offset revision complies with the Federal enforceability requirements of the "Emission Offset Interpretive Ruling", Appendix S 40 CFR Part 51 (44 FR 3274, January 16, 1979).

Proposed Action

Approval.

Public Comment

We received no comments regarding this revision.

Final Action

Approval.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged in later proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director in the **Federal Register** on July 1, 1982.

This notice is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated May 8, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended.

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410.

2. Section 52.1870 is amended by adding new paragraphs (c) (71) and (72) to read as follows:

§ 52.1870 Identification of Plan

* * * * *

(c) * * *

(71) On July 1, 1980, the State of Ohio submitted a revision to its State Implementation Plan amending § 3704.11 of the Ohio Revised Code. This revision expands the authority given to a political subdivision in relation to certain open burning activities. Additional information for the revision was also submitted on September 30, 1980 and January 16, 1981.

(72) On March 16, 1982, the State of Ohio submitted a revision to its State Implementation Plan for TSP for the Southerly Wastewater Treatment Plant in Columbus, Ohio.

* * * * *

[FR Doc. 85-13857 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2805-2]

Standards of Performance for New Stationary Sources; Amendment to Method 9; Decision in Response to Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of amendment to rule.

SUMMARY: On February 2, 1984 (49 FR 6458), EPA amended Reference Method 9 (40 CFR Part 60, Appendix A), along with the promulgation of standards of performance for metallic mineral processing plants. Subsequently, the American Iron and Steel Institute (AISI) submitted a Petition for Reconsideration requesting the Administrator to withdraw the amendment to Method 9. This petition has been evaluated, and EPA has decided to withdraw the amendment.

EFFECTIVE DATE: June 13, 1985.

ADDRESSES: *Docket.* Docket number A-81-03 contains information considered by EPA in developing the February 21, 1984, rulemaking published at 49 FR 6458 and the Petition for Reconsideration to which this notice is responding. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Shirley Tabler, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION:

I. Background

Standards of performance for metallic mineral processing plants were promulgated in the **Federal Register** on February 21, 1984 (49 FR 6458). The promulgated standards apply to new, modified, or reconstructed metallic mineral processing facilities for which construction was commenced after August 24, 1982. Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources," was also amended concurrently with the promulgation of the new source performance standard (NSPS). Under 40 CFR 60.11, Method 9 is used for determining compliance with all NSPS's that contain opacity limitations. Method 9 is contained in Appendix A of 40 CFR Part 60.

The purpose of the amendment to Method 9 was to provide more specificity on the application of Method 9 in determining the opacity of process fugitive emissions. During the data collection in support of the metallic minerals processing standard, observers trained in the use of Method 9 followed the method in observing visible process fugitive emissions. In response to comments on the proposed metallic minerals processing standard, EPA decided to provide clarification of the use of Method 9 for sources of this type. The amendment to Method 9 was considered to be a technical clarification, and, for this reason, EPA determined that it was not necessary to provide an opportunity for public comment.

II. Summary of AISI Petition for Reconsideration

On April 20, 1984, the AISI filed with the U.S. Court of Appeals (D.C. Circuit) a petition for review of the amendment to Reference Method 9. On May 24, 1984, AISI filed with EPA a petition for reconsideration of the amendment. The D.C. Circuit has stayed the litigation pending EPA action on the petition for reconsideration. The following discussion summarizes AISI's major arguments concerning the amendment to Method 9 in its petition for reconsideration.

A. The AISI asserted that prior to the February 21, 1984, amendment, Method 9 could be used only for measuring the opacity of emissions from stacks and similar ducted emission sources. Method 9 was promulgated on December 23, 1971, and the instructions in the method were phrased in terms of measuring the opacity of the plume of emissions from a stack. On November 12, 1974, EPA amended Method 9 to clarify procedures for determining the opacity of emissions from sources whose plumes contain condensed water vapor and to define better the position of the observer with respect to the plume. According to AISI, it had not been suggested prior to the February 21, 1984, amendment that Method 9 was capable of being used to measure the opacity of fugitive (i.e. nonducted) emission sources.

B. The AISI argued that the February 21 amendment to Method 9 expanded the applicability of the method to measurement of fugitive emissions from all sources, including nonducted emission sources. When the NSPS for metallic mineral processing plants was proposed, EPA indicated that it intended to measure fugitive emissions from those facilities and that observers collecting data had employed Method 9. The EPA did not indicate that the observers had made modifications in the method. After proposal, several commenters questioned the applicability of Method 9 to metallic minerals processing plant fugitive emissions and suggested that the fugitive emission limit in the NSPS be deleted. Under the amendment to Method 9, AISI argued that EPA has formally sanctioned the use of Method 9 for measuring fugitives not only from metallic mineral processing plants but also, for NSPS and State Implementation Plan (SIP) purposes, from a variety of other sources operating under various conditions.

C. The AISI also argued that EPA failed to provide adequate notice and opportunity for comment. The amendment was promulgated in conjunction with the final NSPS for the metallic minerals processing plants. The Agency gave no suggestion in the proposed NSPS that Method 9 might be amended. The AISI further argued that

Method 9 is used to determine compliance with opacity limits for sources subject to NSPS and SIP emission limitations, other than metallic minerals processing plants, under 40 CFR 60.11 and 40 CFR 52.12(c)(1). The AISI asserted that these sources had no notice and opportunity for comment on the amendment, that no plausible argument was made that notice and comment would have been impracticable, or contrary to the public interest with regard to the amendment to Method 9, and that the amendment to Method 9 cannot be considered to be sufficiently minor to make notice and comment unnecessary because the amendment extends the reach of Method 9 to provide for measurement of emissions from unducted emissions sources. In addition, AISI alleges that the Agency is inconsistent in its claim that the amendment to Method 9 is a minor change or clarification because in the preamble to the promulgated rule the Agency acknowledged that the method, as written, did not provide sufficient guidance for the measurement of opacity levels from process fugitive emission sources.

Finally, AISI argued that because EPA failed to satisfy the notice and comment requirements in promulgating the amendment to Method 9, the Agency should withdraw the Amendment and provide notice and an opportunity for public comment.

III. Response to AISI Petition for Reconsideration

The following discussion responds to AISI's major arguments regarding the amendment to Method 9.

A. In its petition, AISI claimed that, prior to the amendment, Method 9 could be used only for measuring the opacity of emissions from stacks and similar ducted emission sources. In the past, Method 9 has been consistently used to measure the opacity from fugitive sources, similar to those found in the metallic minerals processing industry, in several NSPS's. The NSPS in 40 CFR Part 60 that currently contain opacity limitations for fugitive emission sources are: Portland cement plants (Subpart F), asphalt concrete plants (Subpart I), secondary lead smelters (Subpart L), primary lead smelters (Subpart R), coal preparation plants (Subpart Y), ferroalloy production facilities (Subpart Z), electric arc furnaces at steel plants (Subpart AA), grain elevators (Subpart DD), phosphate rock plants (Subpart NN), and asphalt processing and asphalt roofing manufacturer (Subpart UU). These 10 NSPS's have been promulgated over a long period, dating back to the early 1970's. As previously stated, these NSPS's all contain fugitive emission sources similar to those found in the metallic minerals processing industry, and the opacity is measured, as specified in 40 CFR 60.11(b), by Method 9. For example, affected facilities such as conveyor transfer points; bulk loading and unloading systems; raw material and finished product storage; and truck, barge, ship, and railcar loading and unloading stations are examples of sources of fugitive emissions contained in these NSPS's that are measured by Method 9. Thus, it is clear that application of Method 9 to fugitive sources for NSPS purposes is a longstanding practice.

B. The foregoing discussion also clearly demonstrates the incorrectness of the petitioner's claim that the amendment to Method 9 expanded the applicability of the method to measurement of fugitive emissions from nonducted sources. As specified in the General Provisions for all standards of performance for stationary sources (40 CFR 60.11), Method 9 is the longstanding method for the determination of opacity. Method 9 does not differentiate between measurement of opacity from fugitive (nonducted) sources and measurement of opacity from stack (ducted) sources. The purpose of the amendment was to provide more detail on how the method should be applied. The amendment was not intended to, nor did it, expand the scope of the procedures or applicability of the method. It simply emphasized the positioning of observers in relation to the visible fugitive emissions being observed.

C. The Agency has, on several occasions, promulgated technical revisions to reference methods without providing public notice and comment. The decision as to whether to provide notice and an opportunity for comment is a case-by-case judgment. The AISI's assertion that EPA's statement in the rulemaking notice concerning the sufficiency of guidance in Method 9 amounts to an admission that an opportunity for notice and comment was required is simply a misreading of the notice, and the basis for dispensing with notice and comment. The AISI's assertion seems to suggest that the amendment here amounts to a substantive change to the method itself, which it clearly is not. The Agency intended to indicate in the notice that it would be appropriate, but not necessary, to include more precise specifications in Method 9 as to certain aspects of the positioning of an observer taking measurements of a fugitive emission source. The Agency decided to amend Method 9 to provide such specifications as a technical clarification. Such specifications did not change the general provisions of the method, but simply provided details on its precise application. This was viewed then, as now, as a ministerial act, with notice and comment unnecessary.

While EPA does not believe that notice and opportunity for comment was required with respect to the amendment to Method 9, EPA has decided to withdraw the amendment because of the outstanding petition for review, the issue of notice to interested parties since EPA does not believe that litigation of this issue would be an appropriate use of Agency or judicial resources, and also because EPA does not consider the amendment to Method 9 necessary. This withdrawal does not change the applicability of Method 9, including its application to fugitive emission sources.

As is demonstrated by past practice, Method 9 has, as a longstanding practice, been used for measurement of opacity of fugitive emissions prior to this amendment, and will continue to be sufficient for this purpose after withdrawal of the amendment.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials [Section 307(d)(7)(A)].

B. Office of Management and Budget Reviews

1. *Paperwork Reduction Act.* There are no information collection requirements associated with this rulemaking.

2. Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This final rulemaking is not major because it withdraws an amendment to a test method and, therefore, results in none of the significant adverse economics effects described in the Order. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are included in Docket No.

A–81–03. This docket is available for public inspection at EPA's Central Docket Section that is listed under the **ADDRESSES** section of this notice.

C. Regulatory Flexibility Act Compliance

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Agency has reviewed the impact of this withdrawal of the amendment to Method 9 on small entities. This rulemaking action merely withdraws an amendment that was made to a test method. Such withdrawal has no effect on the scope or applicability of Method 9. I hereby certify that this rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: May 31, 1985.

Lee M. Thomas,

Administrator.

1. The authority for Part 60 continues to read:

Authority: 42 U.S.C. 7411, 7414, 7601A.

2. Appendix A of 40 CFR Part 60 is amended by removing paragraph 2.3.3 in Method 9 as follows:

Appendix A—Reference Methods

* * * * *

Method 9—Visual Determination of the Opacity Emissions from Stationary Sources

* * * * *

2. Procedures

* * * * *

2.3 * * *

2.3.3 [Removed]

* * * * *

[FR Doc. 85–13746 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6602

[I–15306, I–15307]

Idaho: Modification of Stock Driveway Withdrawals

Correction

In FR Doc. 85–10559, appearing on page 18487 in the issue of Wednesday, May 1, 1985, the date "April 24, 1985" should have accompanied the signature.

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

[Docket No. FEMA–FIA]

National Flood Insurance Program; Assistance to Private Sector Property Insurers; Correction

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule; correction.

SUMMARY: This correction relates to the final rule that was published in the **Federal Register** on April 25, 1985 (50 FR 16236–16261), regarding changes in the National Flood Insurance Program's assistance to private sector property insurers under the "Write-Your-Own" (WYO) Program.

Under the WYO Program, the Standard Flood Insurance Policy may be issued by private sector insurers signatory to Financial Assistance/Subsidy Arrangements (the Arrangement) entered into by and between the Federal Insurance Administrator and private sector insurers. The final rule set forth the Arrangement in Appendix A to 44 CFR Part 62, with Section B of Article III of the Arrangement containing a provision for the amount of operating and administrative expenses that insurers are entitled to withhold from their written premiums. On line 16 of Section B of Article III of the Arrangement, appearing in the left-hand column of page 16246, a date in parenthesis was inadvertently included. This parenthetical date, "(1982)", is not only unnecessary in light of the qualifier, "the latest available (as of March 15 of the prior Arrangement year)", appearing on lines 13 and 14 of this Section B, but would also be contradictory to this qualifier. Therefore, this parenthetical date, "(1982)", should be deleted.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 646–3419.

Accordingly, in FR Doc. 85–9747, appearing on pages 16236–16261 in the issue of April 25, 1985, the following correction is made in Appendix A to 44 CFR Part 62:

Appendix A—[Corrected]

1. On page 16246 in the left-hand column, line 16 of Section B of Article III is corrected by removing the phrase, "(1982)".

Issued at: Washington, D.C.

Jeffrey S. Bragg,

Federal Insurance Administration.

[FR Doc. 85–14235 Filed 6–12–85; 8:45 am]

BILLING CODE 6718–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 533, 552 and Appendix B

[APD 2800.12 CHGE 10]

General Services Administration Acquisition Regulation; Protests, Disputes, and Appeals

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add Subpart 533.1, Protests, in order to supplement the Federal Acquisition Regulation (FAR) by providing agency procedures for processing protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA). This change cancels Acquisition Letter V–84–5 and incorporates the contents of Acquisition Circular AC–84–8 regarding the arrangement of documents in appeal files, into the regulation. The intended effect is to implement the protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369).

EFFECTIVE DATE: May 14, 1985.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4764.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1985, the General Services Administration published in the **Federal Register** (49 FR 10276) GSAR Notice No. 5–82g inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No public comments were received. Comments received from various organizational elements within GSA have been analyzed, reconciled, and incorporated, when appropriate, in this GSAR final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule has minimial impact outside of the agency. It establishes internal procedures for the processing of protest and appeals. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Ch. 5.

Government procurement.

1. The authority citation for 48 CFR, Parts 533 and 552 continue to read as follows:

Authority: 40 U.S.C 486(c).

2. The title of Part 533 is revised to read as follows:

PART 533—PROTESTS, DISPUTES, AND APPEALS

3. The table of contents for Part 533 is amended by removing section 533.014 and by adding new Subparts 533.1 and 533.2 and related sections to read as follows:

* * * * *

Subpart 533.1—Protests

Sec.

533.102 General.
533.103 Protest to the agency.
533.104 Protests to GAO.
533.105 Protests to GSBCA.
533.106 Solicitation provision.

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

Authority: 40 U.S.C. 486(c).

4. Section 533.000 is revised to read as follows:

533.000 Scope of part.

This part sets forth procedures for processing protests and for processing those contract disputes and appeals to be decided by the GSA Board of Contract Appeals.

533.014 [Redesignated as 533.214.]

5. Section 533.014 is redesignated as section 533.214.

6. Subpart 533.1 is added to read as follows:

Subpart 533.1—Protests

533.102 General.

(a) Personnel concerned with processing protests must also consult FAR Subpart 33.1.

(b) Solicitations shall instruct interested parties to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer *and* the appropriate Assistant General Counsel, as follows:

Office of Information Resources Management
Assistant General Counsel (LK), General Services Administration, Washington, D.C. 20405
Public Buildings Service
Assistant General Counsel (LB), General Services Administration, Washington, D.C. 20405
Office of Federal Supply and Services
Assistant General Counsel (LP), General Services Administration, Washington, D.C. 20406
Federal Property Resources Services
Assistant General Counsel (LD), General Services Administration, Washington, D.C. 20405
Staff offices
Assistant General Counsel (LG), General Services Administration, Washington, D.C. 20405

(c) Except as indicated in this subpart, the Office of General Counsel (OGC) is responsible for all contacts with the GAO or GSBCA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSBCA.

533.103 Protests to the agency.

The contracting officer shall consider those protests which are filed 5–31–85 with the agency. The protestor shall be notified in writing of the contracting officer's final decision.

533.104 Protests to GAO.

(a) *General.* (1) In addition to the requirements of FAR 33.104(a)(2), the agency report shall contain the GAO protest number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved, and a statement indicating whether the protest was filed before or after award. If the protest is filed after award, the report shall contain the identity of the awardee, the date of award, the contract number, the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments), the total number of bidders, a complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken), and any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identifed within the text of the position statement, alphabetically or numerically; e.g., Tab A, Exhibit 1, etc.)

(2) GAO protests must be handled on a priority basis. The appropriate Assistant General Counsel shall prepare a report for signature of the General Counsel responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and approved by the contracting director. When requested by the appropriate Assistant General Counsel, the Regional Counsel shall prepare a statement of legal position analyzing the merits of a protest concerning a regional procurement.

(3) The following procedures shall be followed in handling protests:

(i) When a protest is received by the agency, the Assistant General Counsel (AGC) shall telephonically notify the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. If the contracting activity or Regional Counsel receives a copy of a protest before being notified thereof by the Assistant General Counsel, they shall immediately notify the appropriate Assistant General Counsel.

(ii) After receiving the formal protest, which has been filed with GAO, the AGC shall formally request a statement of fact and position from the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. The contracting officer shall immediately notify the affected bidders or offerors that a protest has been received.

(iii) The contracting officer shall notify assigned counsel and begin preparing a documented statement of fact and position immediately upon receiving a protest of notice thereof.

(iv) When completed, the statement of fact and position must be concurred in by the contracting director; and on

regional procurements, by the Office of Regional Counsel. In appropriate cases, the Assistant General Counsel may request the Regional Counsel to prepare a legal position analyzing the merits of a protest against a regional procurement. In such cases, the contracting officer's statement of fact and position should be included as a referenced attachment thereto.

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate Assistant General Counsel, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the Office of the Assistant General Counsel no later than 10 workdays after the date on which the Assistant General Counsel originally received the protest from the GAO. This time period may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate Assistant General Counsel shall promptly be notified, by telephone, or by reasons for the delay and of the additional time needed. Additional time may be granted if it is determined that the specific circumstances of the protest require a longer time. A request for extension is appropriate only if the factual or legal issues affecting the resolution of a protest are so complex that an adequate report cannot be prepared on a timely basis; the necessity of coordinating the report with other agencies, or with activities in a remote or a distant location, makes it impossible to prepare an adequate report on a timely basis; or other compelling circumstances prevent the timely preparation of an adequate report. Upon request of the Assistant General Counsel, the contracting officer shall confirm any oral requests for extensions in writing. The contracting director shall occur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 25 workdays from GSA's original receipt of the protest, may only be granted by the GAO. The Assistant General Counsel will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the Assistant General Counsel, the contracting officer or Regional Counsel shall advise the Assistant General Counsel of all subsequent developments which may have a bearing on the case.

(vii) All documents transmitted under these procedures must be sent by the fastest means possible.

(viii) In addition to the requirements of FAR 33.104(a)(5)(ii), a copy of any comments is sent to the Assistant General Counsel.

(4) The Office of General Counsel (OGC) shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC shall be responsible for promptly advising the GAO of any change in the designated officials.

(5) The format for notification required by FAR 33.104(a)(3) is as follows:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Accounting Office (GAO).

The protest was filed by *(Insert the name and address of the protester, and the name of the person signing the protest.)* on *(Date)*.

Copies of the protest may be obtained from this office or from the protester at the address above.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office within 7 calendar days of receipt of this notice. A copy of any submission to the GAO should be provided to this office.

Contracting Officer's signature.

(b) *Protests before award.* In accordance with FAR 33.104(b), the HCA may determine in writing that the supplies or services to be contracted for are urgently required, delivery or performance will be unduly delayed by failure to make award promptly, or a prompt award will otherwise be advantageous to the Government. A written determination and findings (D&F) must be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the Assistant General Counsel who will notify GAO of the agency's intended action.

(c) *Protests after award.* The procedures in paragraphs (a) and (b) shall apply to the handling of protests after award. Contract performance need not be suspended pending resolution of a protest unless suspension is required by FAR 33.104(c).

533.105 Protests to GSBCA.

(a) *Notification procedure.* After receiving of a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegation official in the Office of Information Resources Management. When giving such notification, the contracting officer should follow these procedures:

(i) Avoid interpreting or characterizing the nature of the protest.

(ii) Use appropriate electronic means in order to ensure delivery to all such firms by the workday after the date of filing with the GSBCA. The Standard Form 14, Telegraphic Message, is to be used when sending notices through the GSA Communications Center. When preparing the Standard Form 14, the text should be double spaced, typed in upper case letters, and the priority "Immediate" assigned. Each address on the mailing list must contain a street address and a zip code. If available, a fax, teletype, or TWX number should also be included as the first line of each address.

(iii) Use the following format:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Services Administration Board of Contract Appeals (GSBCA).

The protest was filed by *(Insert the name and address of the protester, and the name of the person signing the protest.)* on *(Date)*.

The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98-369.

Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th & F Streets NW, Washington, D.C. 20405, from the contracting officer, or from the protester at the address above.

Contracting officer's signature.

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery.

(3) Assigned counsel (e.g., LK, LB, LP, etc.). If the protester failed to provide the appropriate Assistant General Counsel a copy of the protest as required by the solicitation, a copy of the protest complaint, including all attachments, must be forwarded to the appropriate Assistant General Counsel by appropriate means to ensure next day delivery. Assigned counsel will work with the Assistant General Counsel, Claims and Litigation Division (LC) on all protests to the GSBCA.

(4) The Board, *through LC*, within 5 workdays after the date of filing with the GSBCA, that the notices described in paragraphs(a) (1) and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice shall be provided.

(b) *Protest file.* In order to ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receipt of the protest by the contracting activity. The protest file shall be forwarded to LC by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. LC will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, LC will advise the contracting officer accordingly. The following rules govern the assembly of protest files:

(1) *Format.* Protest file exhibits are true, legible, and complete copies. They must be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and indicate which exhibits, if any, have been filed with the Board in camera (see (b)(3) below) or otherwise not served on every other party.

(2) *Contents.* In addition to the items required by FAR 33.105(b), the contents should include those items required by GSBCA Rule 4(a), when appropriate. (See 48 CFR 6101.4(a).)

(3) *Confidential, privileged, or proprietary information.* The protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed *only* in the copies going to the Board and to LC. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to LC and the GSBCA, and should include an identifying statement; e.g., "proposals being considered for award."

(c) *Protest conference.* Within 6 working days of the filing of a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or trial is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.* (1) Upon a Board decision (oral or written) to suspend procurement authority pending a decision on the merits of a protest, the Contracting Officer, in conjunction with the appropriate Assistant General Counsel, shall comply with the suspension decision.

(2) If the Board suspends performance of a contract for automatic data processing goods and services, the Contracting Officer shall take immediate action to comply with the suspension decision (40 U.S.C. 759(h)(3)(B)). Such suspension will be effective as directed by the Board.

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources, the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before such Board decision (40 U.S.C. 759(h)(6)(B)).

533.106 Solicitation provision.

The contracting officer shall insert the provision at GSAR 552.233–2, Service of Protest (May 1985) (Deviation FAR 52.233–2), in all solicitations for other than small purchases.

7. Subpart 533.2 is added to read as follows:

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

The contracting officer shall insert the clause at GSAR 552.233–70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233–1.

8. Section 533.7001 is revised to read as follows:

533.7001 Rules of the GSA Board of Contract Appeals.

The Rules of the GSA Board of Contract Appeals (GSA Order BCA 2806.1), which were issued November 30, 1984, by the Chief Judge and Chairman of the Board, appear in their entirety in the Code of Federal Regulations, Title 48, Chapter 61.

9. Section 533.7101 is revised to reads as follows:

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals along with a copy to the contracting officer. Final decisions must be appealed within 90 calendar days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period will be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of the contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

10. Section 533.7102 is revised to read as follows:

533.7102 Contents of notices of appeal.

A notice of appeal must be in writing and should indicate that an appeal is thereby intended, should indentify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal shall be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

11. Section 533.7103 is amended to revise paragraph (a) to read as follows:

533.7103 Appeal files.

(a) Appeal files must be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless LC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file can not be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the Assistant General Counsel, Claims and

Litigation Division (LC), before expiration of the designated time.

* * * * *

12. Section 533.7103–1 is amended by revising paragraph (a), (b) (1) and (2), and (c) to read as follows:

533.7103–1 Preparation of the appeal file.

(a) *General.* Appeal files must be prepared in quadruplicate. Each file is identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the document included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file, these changes must be included, appropriately identified, in the later appeal file. Such files must also include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file must be assembled by using a two-piece red pressboard binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510–00–582–4201). A gummed label (NSN 7510–00–264–5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files must not be more than 1 inch thick. If the file will be more than 1 inch thick, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

* * * * *

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, the date and a brief description of the document and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. The exhibits shall be arranged in chronological order, earliest document first (as exhibit 1), and be separated by tabs for identification. For example:

	Exhibit	Date
Copy of basic contract, including referenced terms and conditions and any amendments	1	5/20/84
Notice of award	2	5/20/84
Notice to proceed and facsimile of Post Office receipt	3	6/5/84
Contractor's request for final decision or other documents of claim in response to which the decision was issued	4	8/5/84
Contracting officer's final decision letter applicable to the dispute and facsimile of Post Office receipt	5	8/25/84
Notice of Appeal with attachment, if any	6	9/10/84
Board of Contract Appeals acknowledgement of contractor's Notice of Appeal	7	9/15/84

(2) In addition to the exhibits listed in (c)(1) above, other pertinent exhibits, such as the following, should be included and exhibited as applicable, in chronological order:

(i) Copy of the repurchase contract, including referenced terms and conditions.

(ii) Copies of specifications/drawings applicable to the dispute.

(iii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(iv) Copy of letter assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(v) Copies of defaulted purchase/delivery orders.

(vi) Copies of purchase/delivery orders issued under the repurchase contract.

(vii) Proof of payment and a detailed disbursement listing, annotated and certified, if applicable.

Note.—The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing, annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

(viii) Evidence of certification of the claim or claims, as applicable.

(ix) All other correspondence between the Government and the contractor relevant to the appeal.

(x) All documents and other physical evidence on which the contracting officer relied in making a decision.

13. Section 533.7103–2 is amended by revising paragraph (a) and (b) to read as follows:

533.7103–2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the contracting director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which must be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. In addition, a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision must be prepared. A point of contact must be given to LC; name of individual, position, title, and telephone number.

(b) The contracting officer shall retain one copy of the appeal file.

* * * * *

14. Section 533.7104 is revised to read as follows:

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position is submitted to LC simultaneously with the appeal file, but as a separate document; i.e., it will not be included as part of the appeal file or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The contracting officer shall sign the memorandum of position.

15. Section 533.7105 is amended by revising paragraph (a), (b), and (d) to read as follows:

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board will be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the United States Court of Appeals for the Federal Circuit, or the United States Claims Court, as appropriate. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. If further appeal of decision or a motion for reconsideration of a decision is contemplated, the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need not take any further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

* * * * *

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and LC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality, completed by both parties, and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The table of contents for Part 552 is amended by adding section 552.233–2 and revising 552.233–70 as set forth below:

* * * * *

Sec.

552.233–2 Service of protests.

522.233–70 Disputes (Utility Contract).

* * * * *

Authority: 40 U.S.C. 486(c).

17. Section 552.233–2 is added to read as follows:

552.233–2 Service of protest.

As prescribed in GSAR 533.106, insert the following provision:

Service of Protest (May 1985) (Deviation FAR 52.233–2)

A copy of any protest, as defined in FAR 33.101, that is filed within the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer, ————* and the Assistant General Counsel ————**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within one day of filing a protest with the GAO.

(End of Provision)

*Insert the address of Contracting Officer or refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the Contracting Office is identified.

**Insert the full title and address of the appropriate Assistant General Counsel. (See § 533.102(b).)

18. Section 552.233–70 is amended to revise the introductory paragraph to read as follows:

552.233–70 Disputes (utility contract).

As prescribed in GSAR 533.214, insert the following clause:

* * * * *

19. Section 552.236–70 is amended to revise the introductory paragraph to read as follows:

552.236–70 Definitions.

As prescribed in GSAR 536.570–1, insert the following:

* * * * *

20. Section 552.236–71 is amended to revise the introductory paragraph to read as follows:

552.236–71 Authorities and limitations.

As prescribed in GSAR 536.570–2, insert the following:

* * * * *

21. Section 552.236–72 is amended to revise the introductory paragraph to read as follows:

552.236–72 Specialist.

As prescribed in GSAR 536.570–3, insert the following clause:

* * * * *

Appendix B. [Removed and Reserved]

22. Appendix B of the regulation is removed in its entirety and reserved.

Dated: May 14, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–14308 Filed 6–12–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155–4175]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of modification of fishing restrictions.

SUMMARY: NOAA modifies that portion of the **Federal Register** notice which announced fishing restrictions on Pacific ocean perch caught in ocean waters off Washington, Oregon, and California. Pacific ocean perch are regulated under the Pacific Coast Groundfish Fishery Management Plan (FMP). This modification provides consistent regulations between State and Federal fishery agencies.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; or Mr. E.C. Fullerton Director, Southwest Region, NMFS), 213–548–2575.

SUPPLEMENTARY INFORMATION: At its April meeting, the Pacific Fishery Management Council (Council) recommended that the trip limit for Pacific ocean perch taken in the Pacific coast groundfish fishery should be 20 percent (by weight) of all fish on board, or 5,000 pounds, whichever is less. This action was accepted by the Secretary of Commerce (Secretary) and published in the **Federal Register** (50 FR 18668, May 2, 1985).

The Council also recommended that landings of Pacific ocean perch up to 1,000 pounds per trip would be unrestricted, regardless of the percentage of these fish on board. This tolerance was suggested so that vessels unexpectedly forced into port (by breakdowns or bad weather) could offload their catch without violating the percentage limit for Pacific ocean perch as long as no more than 1,000 pounds of that species was on board. Otherwise, fishermen forced to shore prematurely might have to discard Pacific ocean perch in order to comply with the 20 percent limit.

This 1,000 pound tolerance was omitted from the State of Washington and Federal regulations, but was included by the State of Oregon. The State of Washington has agreed to adopt this tolerance.

Secretarial Action

The Secretary concurs with the Council's recommendation and revises the trip limit for Pacific ocean perch (50 FR 18668, May 2, 1985) as follows—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50' N. latitude), no more than 5,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip, with the following exception. Up to 1,000 pounds (round weight) of Pacific ocean perch may be taken and retained or landed, per vessel per fishing trip, without regard to the 20 percent limitation.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean water (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Classification

The Director, Northwest Region, has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the FMP, the Magnuson Fishery Conservation and Management Act, and other applicable law.

There will be no change in environmental impact as a result of this notice from that determined in the environmental impact statement prepared for the FMP.

A regulatory impact review and regulatory flexibility analysis prepared as part of the FMP described the estimated ranges of impacts and the effects on small businesses from its implementation. There will be no change in impacts from those previously determined as a result of this notice.

This is a minor modification of a prior notice which relieves a restriction and as such is not a rulemaking requiring review under Executive Order 12291.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: June 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-14255 Filed 6-10-85; 2:48 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 114
Thursday, June 13, 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 1040

Milk in the Southern Michigan Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of June through August 1985 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

DATE: Comments are due June 20, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for June through August 1985:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

All persons who want to sent written data, views or arguments about the proposed suspension should sent two copies to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include June 1985 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of June through August 1985 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents producers supplying the market, requested the suspension.

MMPA expressed concern that the market is in an unsettled state for several reasons, which makes it unlikely that it will be able to meet the 50 percent requirement. The following items were cited as reasons why a suspension is requested:

—Milk production in the Southern Michigan marketing area has substantially increased since the termination of the milk diversion program on March 31, 1985.
—MMPA processes most of the surplus milk for the market into butter, condensed milk and milk powder.
—MMPA anticipates a reduction in the Class I utilization for this market to as low as 35–40 percent during June through August.
—The relaxation of the pooling requirements should not attract additional milk supplies to the market because blend prices in nearby markets are substantially higher.

The association said that the suspension is needed to avoid the inefficient handling of milk merely to assure pooling of supply plants and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the fluid milk sales of the market.

Accordingly, MMPA requests the suspension of the aforesaid provisions for the months of June through August 1985.

List of Subjects in 7 CFR Part 1040

Milk Marketing Order, Milk, Dairy Products.

The authority citation for 7 CFR Part 1040 continues to read as follows:

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

Signed at Washington, D.C., on: June 7, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85–14232 Filed 6–12–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 5, 35 and 385

[Docket No. RM78–11–000, et al. Order No. 424]

Termination of Rulemaking Dockets; Institute for Public Interest Representation, et al.

Issued: June 7, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Withdrawal of proposed rules and denial of petitions for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating four rulemaking dockets. In particular, the Commission is withdrawing two Notices of Proposed Rulemaking (NOPRs) issued in Docket Nos. RM79–41–000 and RM82–12–000, and denying two petitions for rulemaking issued in Docket Nos. RM78–11–000 and RM83–59–000. The NOPRs proposed changes that are now either unnecessary or inconsistent with Commission policy. The petitions fail to state a convincing case for revising current Commission policy. The bases for these actions are explained in detail by individual docket number in the order.

DATE: This rule will be effective June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Adelia S. Maddox, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8540.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

In the matter of Institute for Public Interest Representation, Docket No. RM78–11–000; Affiliate Purchases; Federal Power Act Fuel Adjustments, RM79–41–000; Equal Access to Justice, RM82–12–000; New England Environmental Mediation Center, RM83–59–000.

Issued: June 7, 1985.

The Federal Energy Regulatory Commission (Commission) is terminating four rulemaking dockets. In particular, the Commission is withdrawing two Notices of Proposed Rulemaking (NOPRs) because a final rule in those proceedings is either unnecessary or inconsistent with Commission policy. In addition, the Commission is denying two petitions for rulemaking because the petitioners fail to state a convincing case for revising current Commission policy.

I. Withdrawal of Notices of Proposed Rulemakings

RM82–12–000: Equal Access to Justice Act

The Commission is withdrawing its proposed regulations [1] designed to implement the Equal Access to Justice Act, 5 U.S.C. 504 (1981) (EAJA). The expiration of the EAJA has eliminated the need for any regulations.

Section 504 provided that a Federal agency must award attorney's fees and expenses to an eligible party that prevails over the agency in an "adversary adjudication," unless the agency's position was substantially justified or special circumstances make an upward unjust. 5 U.S.C. 504(a)(1).[2] Since authorization of the EAJA expired on September 30, 1984, the Commission is withdrawing the proposed regulations designed to implement it as they are now unnecessary.

The Commission notes that according to the terms of section 203(c) of the EAJA, the requirements of the section continue to apply through final disposition of any adversary adjudication initiated before October 1, 1984. The number of pending Commission proceedings that will be subject to this provision is limited because the vast majority of Commission proceedings are not "adversary adjudications." In those instances where the provision continues to apply, the case-by-case approach that has been used by the Commission to comply with EAJA in the past will be adequate. The Commission is committed to meet fully its remaining obligations under the EAJA. However, the number of cases in which it may still apply does not warrant expending the resources necessary to promulgate a rule implementing a statute which has expired.

It is not clear at this time whether the EAJA will be reauthorized.[3] If it is, the Commission will then consider whatever regulations may be necessary to implement the provisions of the new statute.

RM79–41–000: Affiliate Purchases; Federal Power Act Fuel Adjustments

In 1979, the Commission proposed to amend its regulations under the Federal Power Act, relating to fuel cost adjustment clauses.[4]

First, it proposed to amend § 35.14(a)(7) to require utilities to file, as rate schedules, all contracts for fuel purchases from company-owned or company-controlled sources, regardless of whether the price is subject to the jurisdiction of a regulatory body. Section 35.14(a)(7) of the Commission's current regulations provides, in part, that if a regulatory body has jurisdiction over the price of fuel purchased by a utility from an affiliated source, the cost of such fuel shall be deemed to be reasonable, and may be included in the fuel cost adjustment clause. However, if there is no jurisdictional regulatory body overseeing the contracts of fuel purchases from an affiliated source, the utility must file the contracts with the Commission when the utility files its fuel cost adjustment clause. The amendment to § 35.14(a)(7) was proposed to effect the Commission's cost-based policy, which required Commission review of these contracts, regardless of review elsewhere, to determine the factors that went into the price.

Subsequent to the issuance of this NOPR, the Commission, in Option No. 133, affirmed an initial decision which approved a market-price test of reasonableness of the utility's cost of coal purchased from its partially-owned subsidiary.[5] With the departure in Commission policy from a cost-based standard of reasonableness for affiliate transactions to a test based on a market-price standard, the filing of affiliate contracts as rate schedules to determine the reasonableness of a specific cost item is no longer necessary. Therefore, the proposed amendment to § 35.14(a)(7), generically requiring Commission review as rate schedules of contracts subject to review by other regulatory bodies, is also unnecessary. Insofar as such contracts are relevant to a case-specific market price determination, they will be sufficiently accessible through the discovery process.

Secondly, the Commission proposed to amend § 35.14(a)(6) to clarify that certain cost items included in the invoice price of fuel purchased from company-owned or company-controlled sources are inappropriate for automatic flow through under the fuel cost adjustment clause, and therefore will be

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[1] Rules Implementing Equal Access to Justice Act, 47 FR 4313 (Jan. 29, 1982) (Notice of Proposed Rulemaking).

[2] An "adversary adjudication" is an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for granting or renewing a license. 5 U.S.C. 504(b)(1)(C).

[3] Last year, President Reagan vetoed a bill that would have reauthorized the EAJA in an amended form. At that time, he issued a memorandum indicating that he was committed to the principles of equal access to justice and looked forward to approving an acceptable reauthorization bill. Memorandum of Disapproval of H.R. 5479 (November 8, 1984).

[4] Revision of Fuel Cost Adjustment Clause Regulations Relating to Fuel Purchases from Company-Owned or Company-Controlled Sources, 44 FR 28,683 (May 16, 1979), FERC Stat. & Reg. [Proposed Reg.] ¶ 32,022.

[5] Public Service Company of New Mexico, 17 FERC ¶ 61,123 (Nov. 9, 1981), Docket No. ER78–338, *affirming* Public Service Company of New Mexico: Phase II, 13 FERC ¶ 63,041 (Nov. 28, 1980), and Phase I, 11 FERC ¶ 63,002 (Apr. 2, 1980).

excluded from any fuel cost adjustment clause calculation. The proposed amendment would codify the Commission's policy enunciated in *Southern California Edison Company*, issued on April 26, 1978.[6] The Commission will continue to disallow such cost items, but it is not necessary to amend § 35.14(a)(6) to do so. These items can currently be identified on a case-by-case basis or in the Commission's audit of company records.

Since the proposed changes are not necessary or do not conform to current Commission policy, they are being withdrawn.

II. Disposition of Petitions for Rulemaking

RM82-59-000: New England Environmental Mediation Center

On March 10, 1983, the New England Environmental Mediation Center petitioned the Commission to establish mediation procedures for hydroelectric licensing procedures. Petitioners argue that these procedures will help resolve conflicts between applicants and advocates of competing waterway uses. Petitioners suggest, in the alternative, that the Commission issue a Notice of Inquiry to examine the issues involved in mediation and its usefulness at the Commission.

The Commission agrees that mediation on environmental issues among interested parties in a license application proceeding may expedite resolution of the controversy. However, the Commission believes that mediation among the parties should begin before the applicant and those contesting use of the waterway come before the Commission. The Commission's procedures for handling a license application are designed to build a consensus on how best to accommodate competing uses of a waterway. These procedures, as set forth in Part 4 of the Commission's regulations, encourage negotiation before and after an application is filed. Thus, the parties to a proceeding have sufficient opportunity to reach agreement on the issues before the Commission decides the application.

For example, the Commission's regulations permit Commission staff to advise potential licensees on the requirements for filing an application. 18 CFR 4.32(g) (1985). In fact, staff routinely provides guidance on the sufficiency of an application for a preliminary permit or a license. The Commission's regulations also require an applicant, before filing with the Commission, to consult with all Federal, state and local resource agencies on the environmental effects. This ensures that the applicant has conformed with applicable law. *See, e.g.*, 18 CFR 4.38 (1985). Additionally, after a license application is filed, Commission staff conducts technical reviews and, in some cases, holds conferences with applicants and interested intervenors to resolve any disputes among the parties. As a result of these processes, the Commission receives the benefit of negotiations and discussions among the interested parties regarding the proposal's environmental and natural resource implications. The Commission agrees with the petitioner that a formal mediation process will provide the parties with another opportunity to air their concerns. However, as discussed above, this additional step is unnecessary.

The Commission also believes that a formal mediation process is an inappropriate substitute for its procedures. The Commission is required by statute to determine whether a project is best adapted to the improvement or development of the waterway and in the public interest. Federal Power Act section 10(a), 16 U.S.C. 803(e) (1976). The Commission therefore must consider all interests affected by development of a hydroelectric project, and believes that the proposal of the petitioner, by focusing on the actual disputants, will instead emphasize the narrow interests of the parties to the mediation.

Because the Commission believes its procedures for handling disputed license applications are adequate, the Commission is denying the petition from the New England Environmental Mediation Center.

RM78-11-000: Institute for Public Interest Representation

On April 28, 1978, the Institute for Public Interest Representation petitioned the Commission to promulgate regulations relating to communications between outside parties and Commission personnel during informal rulemaking proceedings. The rule sought by the petitioners would require the Commission to establish, after issuance of a NOPR, a file for public inspection to include: (1) All subsequent communications concerning the NOPR, including summary records of oral communications and those relating to routine requests for information or other procedural matters; and (2) all communications concerning the merits of the subject matter of the NOPR which occurred prior to issuance but after Commission staff should have had reason to believe a proposed rule was forthcoming.

The Administrative Procedure Act[7] details specific instances in which *ex parte* communications are prohibited. Such prohibitions only apply to adjudications and formal rulemakings that must be decided "on the record" after an opportunity for an evidentiary hearing.[8] These *ex parte* prohibitions do not apply to informal rulemakings in section 553. Although courts have extended the *ex parte* prohibitions on due process grounds to informal rulemakings that resolve conflicting claims to valuable government privileges, *e.g. Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 54 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977); *Action for Children's Television* v. *FCC*, 564 F.2d 458, 475 (D.C. Cir. 1977), the more recent decisions, issued since the petition was filed, have taken the view that it is neither necessary nor desirable for regulators engaged in general policymaking to be isolated from industry, other affected groups, Congress or members of the general public. *See Sierra Club.* v. *Costle*, 657 F.2d 298, 400–401 (D.C. Cir. 1981).

The Commission is mindful of the need to protect the integrity of the regulatory process, particularly after the public comment period has ended; however, the Commission does not believe that the rigid procedures proposed are appropriate for the informal rulemaking process. Instead, its current procedures are much more conducive to successfully implementing its organic statutes.

Open and flexible communication procedures are necessary in an informal rulemaking proceeding, and the Commission is reluctant to impose a formal, restrictive communication procedure between it and participants through a rule such as the petitioners recommend. The Commission prefers an approach that is more open and flexible yet maintains procedural fairness.

The Commission maintains public files for all rulemaking proceedings. When a document is received, it is placed in the public file for that proceeding and is available to the public for inspection and comment through the Commission's Division of Public

[6] Southern California Edison Company, 3 FERC ¶ 61,075, 61,210 (1978).

[7] 5 U.S.C. 551–706 (1982).

[8] *See* 5 U.S.C. 557(d)(1), 557(a), 556(a), 554(a), and 553(c) (1982).

Information. In addition, the Commission believes it is advisable to make a notation in the docket whenever a significant oral communication relating to a pending rulemaking is received from an outside party.

(Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12,009, 3 CFR 142 (1978); Federal Power Act, as amended, 16 U.S.C. 791–825 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982), Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).)

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Pipeline, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission withdraws the Notices of Proposed Rulemaking in Docket Nos. Rm82–12–000 and RM79–41–000 and denies the petitions for rulemaking filed in Docket Nos. RM83–59–000 and RM78–11–000. These dockets are being terminated as of the date of issuance of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14214 Filed 6–12–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 85–13376 beginning on page 24234 in the issue of Monday, June 10, 1985, make the following correction: On page 24235, in the first column, in the **Authority** citation, the second line should read "4204(a)(6)."

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment and Opportunity for Public Hearing on a Modification to the Arkansas Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is reopening the public comment period on the substantive adequacy of a revised program amendment resubmitted by the State of Arkansas as a modification to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas 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 Arkansas program and proposed amendment are available for public inspection and the comment period during which interested persons may submit written comments on the proposed program elements.

DATE: Comments not received on or before 4:00 p.m., July 15, 1985 will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745–7927

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Arkansas 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. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Tulsa Field Office listed below.

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103

Office of Surface Mining, Reclamation and Enforcement, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Pollution Control and Ecology, State of Arkansas, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209

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 July 15, 1985, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

II. Background on the Arkansas State Program

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 person who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rules at 30 CFR Part 850, whichever is later.

On December 17, 1984, Arkansas submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Arkansas regulatory program which would establish a blaster training and certification program and would amend performance standards for the use of of explosives.

On March 7, 1985, OSM requested public comment on the proposed program amendment [50 FR 9286]. No public comments were received during the comment period.

On April 4, 1985, OSM sent a letter (AR–283) to the State of Arkansas' Department of Pollution Control and Ecology informing the State that OSM had reviewed the amendments and had identified certian deficiencies. The State of Arkansas was provided the opportunity to respond within 30 days to address OSM's concerns.

On May 10, 1985, Arkansas submitted to OSM revised proposed program amendments for blaster certification program and performance standards for the use of explosives (AR-289). In the amendment, Arkansas is proposing changes at 816.61-S and 816.61-U regarding the use of explosives and Part 850 regarding establishing the requirements and procedures for blaster training, examination, and certification program.

Therefore, OSM is seeking comment on the States proposed amendments to establish a program for the training, examination and certification of blasters, and to amend performance standards for the use of explosives.

If the Director determines that the proposal modifications are in accordance with SMCRA and no less effective than the Federal regulations, the amendment will become part of the Arkansas permanent regulatory program.

III. 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 for 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 had 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. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements by SMCRA and the Federal rules would 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 904

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

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

Dated: June 6, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-14248 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-31]

Regatta; National Sweepstakes Regatta, Redbank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the National Sweepstakes Regatta. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting written comments should include their names and addresses, identify this notice (CGD3 85-31) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rule making process.

Drafting Information

The drafters of this notice are Lt D. R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The annual National Sweepstakes Regatta is a powerboat race event to be held on the Navesink River. This event is sponsored by the National Sweepstakes Regatta Association of Red Bank, N.J. This two day event is traditionally held each year on the third weekend (Saturday and Sunday) in August. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Each year the Coast Guard will provide the public full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. It is sanctioned by the American Powerboat Association and is well known to the boaters and residents of this area. The race track oval will be approximately 1.25 miles in length. Races will be held on both days on a section of the Navesink River just east of the N.J. Route 35 Bridge. Race heats will run both days from approximately 10:00 a.m. to 6:00 p.m. with up to 100 inboard/hydroplane powerboats participating each day. The sponsor will place several temporary buoys on the river to mark both the race course and spectator areas. There will be 2 race committee boats anchored within the oval course, one on each end with turn judges and press onboard. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during the races. Vessels desiring to transit the area will be given an opportunity to do so several times during each day in between race heats as directed by the Coast Guard Patrol Commander.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under

Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. The Coast Guard shall ensure that the regulated area is opened periodically to allow transiting vessels to pass through without undue delay.

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

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

PART 100—[AMENDED]

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

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

2. Part 100 is amended by adding § 100.307 to read as follows:

§ 100.307 National Sweepstakes Regatta, Redbank, N.J.

(a) *Regulated Area.* That portion of the Navesink River in Redbank, N.J. between the N.J. Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points.

(b) *Effective Period.* This regulation will be effective from 8:00 a.m. to 6:00 p.m. on both August 17 and 18, 1985, and thereafter annually on the third weekend (Saturday and Sunday) in August unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** notice.

(c) *Special Local Regulations.* (1) The regulated area shall be intermittently closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area while it is closed unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) Vessels awaiting passage through the regulated area shall be held in unmarked anchorages in the area to the east of the N.J. Route 35 Bridge and in the vicinity of Lewis Point.

(4) No transiting vessels shall be allowed out onto or across the regulated area without Coast Guard escort.

(5) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Spectator vessels shall be held behind (north of) a line of buoys provided by the sponsor running approximately west to east starting .25 miles east of the N.J. Route 35 Bridge.

(ii) A second spectator area shall be marked by a curved line of sponsor provided buoys centered on a line drawn approximately due south from Jones Point, running through Can Buoy # 21. All spectator craft shall stay to the east of this string of buoys.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 5, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-14266 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-10-FRL 2839-3]

Designation of Areas for Air Quality Planning Purposes, Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Correction.

SUMMARY: In FR Docket 85-9343 which was published on April 18, 1985 (50 FR 15463), the Grants Pass, Oregon, central business district which is proposed to be redesignated as a nonattainment area for carbon monoxide is corrected to read as follows:

beginning at the intersection of B Street and Fifth Street, extending easterly along B Street to Eighth Street; thence southerly along Eighth Street to M Street; thence westerly along M Street to Fifth Street; thence northerly along Fifth Street to the starting point.

ADDRESS: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue M/S 532, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue M/S 532, Seattle, Washington 98101, Telephone: (206) 442-4233, FTS: 399-4233.

Dated: May 14, 1985.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 85-14327 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[OW-7-FRL-2850-7]

Kansas Application To Extend Its NPDES Program to Federal Facilities Located Within the State

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of application, public comment period on program approval.

SUMMARY: On June 28, 1974, the Environmental Protection Agency (EPA) approved a request by the State of Kansas to administer the National Pollutant Discharge Elimination System (NPDES), under section 402 of the Clean Water Act. Kansas has now applied to EPA to extend its authority to

administer the NPDES program to federal facilities located in the State.

The application received from Kansas is complete and is now available for inspection and copying. Public comments are requested, and a public hearing will be held if there is sufficient public interest.

DATES: Comments and requests for a public hearing must be received on or before July 15, 1985.

ADDRESSES: Comments and requests for a public hearing should be addressed to Larry B. Ferguson, Chief, Water Compliance Branch (WACM), U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2817, Attention Ralph Summers.

FOR FURTHER INFORMATION CONTACT: Ralph Summers, U.S. EPA, Water Compliance Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2817.

SUPPLEMENTARY INFORMATION: In 1977, Congress amended section 313 of the Clean Water Act [33 U.S.C. 1251, et. seq.] to authorize states to regulate federally owned or operated facilities under their water pollution control programs. Prior to the amendments, states, including those authorized pursuant to section 402(b) of the Clean Water Act to participate in the NPDES program, were precluded from regulating federal facilities. Therefore, EPA, in approving state programs under section 402(b), reserved the authority to issue NPDES permits to federal facilities. Since the passage of the 1977 amendments, EPA has been approving extensions of authority to administer the NPDES program to federal facilities.

The Kansas federal facilities submission contains a letter from the State requesting approval, an Attorney General's statement, a copy of Kansas statutes providing authority to carry out the program, and a copy of the Memorandum of Agreement (MOA) executed between the State Director of the Kansas Department of Health and Environment and the Regional Administrator, EPA Region VII. EPA has determined that the existing MOA does not need to be changed in order for Kansas to assume authority over federal facilities.

After the close of the public comment period and after the public hearing, if any, the Regional Administrator, with the concurrence of the Assistant Administrator for Water and the Associate General Counsel for Water, will decide whether to approve or disapprove Kansas' request for authority to regulate federal facilities.

The decision to approve or disapprove Kansas' request for extension of its NPDES authority to federal facilities will be based upon the requirements of sections 313 and 402 of the Clean Water Act and 40 CFR Part 123. If Kansas' request for authority is approved, the Regional Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of approval, EPA will suspend issuance of NPDES permits to federal facilities in Kansas. The State's program will implement Federal law and operate in lieu of the EPA-administered program. However, as with the basic NPDES program, EPA will retain the right, among other things, to object to NPDES permits proposed to be issued by the state to federal facilities, and to take enforcement actions for violations. If the Regional Administrator dissapproves the Kansas request for federal facilities authority, he will notify the State of the reasons for disapproval and of any revisions or modifications which are necessary to obtain approval.

The Kansas federal facilities submission may be reviewed by the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas or at the Environmental Protection Agency office in Kansas City, Kansas, at the address appearing earlier in this notice. Copies of the submission may also be obtained (at a cost of 20 cents/page) by appearing in person at either of those offices, or by writing to EPA or the Kansas Department of Health and Environment at the addresses listed.

All comments received by EPA, Region VII by July 15, 1985, or, presented at the public hearing, if any, will be considered by EPA before taking final action on the Kansas' request for federal facilities authority.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Dated: May 31, 1985.

Morris Kay,

Regional Administrator, Environmental Protection Agency, Region VII.

[FR Doc. 85–14272 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

FIRMR Regulation on Obsolescence and Reuse of Federal Automatic Data Processing Equipment

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed Federal Information Resources Management Regulation (FIRMR) that addresses the issue of obsolescence in the Federal automatic data processing equipment (ADPE) inventory and revises provisions regarding reuse of obsolescent and obsolete ADPE within the Government. The regulation also establishes a special type of compatibility limited requirement for certain situations, called an equipment technology update. The purpose is to address the obsolescence issue including the aging ADPE inventory problem, responsive to the Comptroller General's Report AFMD–81–9 of December 15, 1980. The intent of these changes to acquisition and use provisions is to provide additional means and incentives for agencies to reduce the economic obsolescence of Federal ADPE as well as management paperwork burdens and thereby increase economy and efficiency of automatic data processing in the Government.

DATE: Comments are due July 15, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Washington, DC 20405.

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

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 27, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure benefits to Federal agencies. This is a Government-wide procurement and management regulation that will have little or no cost effect on society.

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement.

Authority: Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c)

Dated: May 6, 1985.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85-14304 Filed 6-12-85; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-268; RM-4605, RM-4818]

FM Broadcast Stations in Tama, IA

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: Action taken herein denies the requests by Douglas J. Neatrour and by Jacobson Broadcasting Company, Inc., to allot Channel 296A to Tama, Iowa and Dysart, Iowa, respectively.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tama, Iowa) (MM Docket No. 84-268, RM-4605, RM-4818).

Adopted: May 22, 1985.

Released: June 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 10314, published March 20, 1984, in response to a petition filed by Douglas J. Neatrour ("petitioner"), requesting the allotment of FM Channel 296A to Tama, Iowa, as that community's first local FM service. Petitioner filed supporting comments reaffirming his intention in applying for the channel. Jacobson Broadcasting Company, Inc., ("Jacobson") licensee of Stations KLIR-AM/FM, submitted a counterproposal; a petition for reconsideration; and a supplement to petition for reconsideration. In addition, comments and an alternative proposal were filed late by Harold A. Jahnke ("Jahnke").[1]

2. Jacobson proposes the allotment of Channel 296A to Dysart, Iowa, instead of Tama. The counterproposal was returned as unacceptable for filing due to short spacings to Station KROC-FM (Channel 297), Burlington, Iowa, causing an excessive site restriction. In the petition for reconsideration and the supplement thereto, Jacobson states that since its counterproposal was filed in response to a petition filed prior to the effectiveness of the new spacing requirements in BC Docket No. 80-90, allowing the 16 kilometers (10 miles) buffer zone, this zone should not apply.[2] After further consideration of the counterproposal using the spacing requirements in effect before implementation of BC Docket No. 80-90, it has been determined that an excessive site restriction of 13.3 kilometers (8.3 miles) still exists. Jacobson has failed to demonstrate city-grade coverage (70 dBu) from this distance. Therefore, the counterproposal is unacceptable.

3. The allotment of 296A to Tama, Iowa would require a site restriction of 12.6 kilometers (7.8 miles) east of the city. As stated in the *Notice*, this site restriction may make it difficult for the channel to provide a city-grade signal to Tama. Therefore, the petitioner was requested to provide information that a site is available that will meet the minimum spacing requirements and at the same time provide a city-grade signal to the community. Petitioner states he has located a suitable tower site and has filed the information with his consulting engineer, but failed to disclose the location to the Commission. Therefore, we shall deny the proposal to allot Channel 296A to Tama, Iowa.

4. In view of the foregoing, it is ordered, that the petition for reconsideration filed by Jacobson Broadcasting Company, Inc., is denied.

5. It is further ordered, that the petition of Douglas J. Neatrour is denied.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-14163 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The late-filed comments of Jahnke were not considered herein. In addition the request to have Channel 296A allotted to Toledo, Iowa is unacceptable as a new petition due to short spacings to Station KCCQ (Channel 296A), Ames, Iowa and Station KGRS (Channel 297), Burlington, Iowa causing an excessive site restriction.

[2] See *Memorandum Opinion and Order*, BC Docket No. 80-90, 97 FCC 2d 279 (1984).

47 CFR Part 73

[MM Docket No. 85-39]

Deletion of AM Application Acceptance Criteria Regarding AM Station Assignment Standards and Relationship Between AM and FM Broadcast Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects the comment/reply comment dates as appearing in the *Preamble* of the Notice of Proposed Rulemaking in this proceeding concerning the deletion of AM Application Acceptance Criteria, published on February 28, 1985 (50 FR 8169).

DATES: The correct dates (as shown in the text of the proposed rule on FR page 8171) are: June 14, 1985 (Comments) and July 15, 1985 (Reply comments).

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-14245 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

Correction

In FR Doc. 85-13402, beginning on page 23470, in the issue of Tuesday, June 4, 1985, make the following corrections:

1. On page 23472, third column, third line of § 32.12(p)(1), "woodstock" should have read "woodcock".

2. On page 23476, first column:

a. The fifteenth line of amendatory instruction 4 should have read: "paragraph (i)(5) introductory text;" and in the forty-first line "(11)(l)" should have read "(ll)(1)".

3. On page 23477, second column, § 32.32(r)(6) should have read:

"(6) Tensas River National Wildlife Refuge. * * *"

4. On page 23477, third column, in § 32.32(x), twenty-five lines from the bottom of the page, "* * * * *" should have appeared as "(3) * * *".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Document No. 50587-5087]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

Correction

In the document beginning on page 24242 in the issue of Monday, June 10, 1985, make the following correction:

On page 24250, the file line was omitted and should have appeared at the bottom of the page as follows:

[FR Doc. 85-13959 Filed 6-6-85; 10:21 am]

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 50, No. 114
Thursday, June 13, 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

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: On November 21, 1984, the Forest Service published a proposed policy (49 FR 45889) which would change the procedures by which the agency administers the Small Business Timber Sale Set-Aside Program. Upon consideration of comments received, the Forest Service gives notice of the adoption of new procedures that will apply to the program. The new procedures recognize Regional differences in relation to (1) timber supply and demand, (2) dependence on National Forest timber, and (3) market fluctuations in recent years. The new procedures revise methods for determining small business shares for each marketing area, develop measures to credit volume to small and large businesses for volume purchased by non-manufacturers, limit the maximum amount of timber sale volume set aside in a given period, advance the time period for set-aside sale selection, provide for Regional differences in the manufacturing requirements for set-aside sale volume to be processed in small business manufacturing facilities, and eliminate volume included in the Special Salvage Timber Sale Program (SSTS) from inclusion in the regular timber set-aside program.

EFFECTIVE DATE: This policy will become effective upon issuance of instructions to Forest Service personnel through the Forest Service Manual. Issuance is expected in about 4 weeks.

FOR FURTHER INFORMATION CONTACT: Address questions about this policy to: Charlie Fudge, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 475-3754.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR Part 121 and Forest Service Manual Chapter 2436 set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the program is to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of the sales of National Forest timber.

Public Comment on Proposed Changes and Adoption of Final Policy

On November 21, 1984, the Forest Service published proposed changes in the timber sale set-aside program and invited public comment (49 FR 45889). The proposed changes would have revised: (1) The method of establishing and changing the small business share in each marketing area; (2) the process for selection of set-aside sales; (3) manufacturing requirements for logs harvested from set-aside sales; and (4) operation of the Special Salvage Timber Sale Program (SSTS). The Forest Service received about 140 written comments on the proposed changes. Comments came from individual large and small business firms (103), associations representing the interests of each business group (16), members of Congress (8), Office of Inspector General (USDA), Small Business Administration, city government (1), and Regional and Forest offices of the Forest Service (10). A summary of the major comments received, along with the agency's response, follows.

A. Establishment of Small Business Shares

1. *Definition of Structural Change.* The final policy defines structural change, which was not in the proposed policy. This was needed in order to provide a common definition for use in recomputation of market shares. A structural change occurs during a recomputation period when a small or large business firm, that purchased at least 10 percent of the total sawlog volume during the last recomputation period, discontinues operations, or changes ownership (i.e., small business purchased by large business or vice versa). When this structural change occurs, the small business share will be recomputed in accordance with the appropriate procedure, as described in the sections relating to 1981-1985 structural changes, or future structural changes. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

1. Change in the size class of the firm(s);

2. The discontinuance of the operation of the firm(s).

In making decisions concerning structual changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations.

Examples of the factors that should be evaluated in determining whether a firm has discontinued operations are: statement of intent to resume operations; changes in physical site conditions which include the dismantling and/or sale of physical assets; indicated intent to harvest Forest Service timber volume under contract; market and general economic conditions; and planned mill reconstruction.

2. *Limit on Shares.* The timber set-aside program is designed to ensure that small business firms have the opportunity to purchase a fair proportion of the timber offered for sale in each marketing area. The small business share defines the proportion of the planned timber sale program that will be assured to small business over a 5-year period. When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. The proposed policy would have limited small business shares to no greater than 80 percent of the planned timber sale program and would have retained the current policy that shares can not decrease to less than 50 percent of the original base share established in 1971.

The current policy permits small business shares of 100 percent, of the planned timber sale program in a market area, which does not represent a fair proportion.

The proposed change received substantial support, although a few individuals suggested some variation in upper and lower share limits. Upon consideration, the Forest Service adopts the provisions of proposed policy and will implement these provisions at the time of the recomputation in FY 1986.

This revision provides a fair market share to small business, permits large business an opportunity to participate in all market areas, and provides the Forest Service an opportunity to enhance utilization through a wider group of potential users.

3. *Recomputation of Shares in FY 86—Region 8 (Southern), Region 9 (Eastern) and Region 10 (Alaska).* Under the proposed policy, current procedures would remain in effect, subject to an upper limit on small business shares of 80 percent, and shares in Regions 8 and 9 would be recomputed in FY 1986 based on the small business purchase history for FY 1981–1985.

Comments were near unanimous in support of retaining the present procedure. A few respondents favored no change in the existing procedure, wanted a different effective date, or desired different years of purchase history.

The agency agrees with these comments and has decided not to change the existing procedure, other than to implement the 80 percent upper limit at the time of the FY 1986 recomputation of small business shares in Regions 8 and 9. Continuation of current procedures recognizes the relatively stable marketing situation in Regions 8 and 9 during the current recomputation period.

4. *Recomputation of Shares in FY 86—Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), Region 4 (Intermountain), and the following National Forests in Region 6 (Pacific Northwest): Wallowa-Whitman NF, Colville NF, Ochoco NF, Malheur NF, and Umatilla NF.* The proposed policy would have calculated a new small business share in these areas at the end of FY 1985 based on the arithmetic average of the small business purchase and harvest history for 1975–1984.

Substantial comment from small business opposed changing recomputation procedures this late in the current period and argued for retaining existing procedures. Some respondents wanted some National Forests in the eastern part of Region 6 included. Some respondents wanted recognition of structural changes which occurred in the industry during FY 1981–1985. A few respondents also wanted to include all of Region 5 in this calculation of shares approach rather than under the approach proposed for that Region. Some large businesses favored use of harvest history as the sole basis for establishing new shares for small purchasers in these Regions. They felt harvest history better reflected the actual needs of small business firms rather than purchase history.

The agency agrees with those who favored retaining existing procedures for recomputing the small business share. Overall, market disruptions did not distort purchase and harvest patterns to the extent that resulted in Region 5 and western Forests of Region 6. The five eastern Forests of Region 6 had marketing patterns more closely associated with those of Regions 1–4 and, therefore, fit the small business share recomputation procedures now used. Conversely, the marketing patterns of Region 5 more closely fit those of western Forests in Region 6. The agency also recognizes the need to provide for structural changes in the industry and for unique changes which the current procedure would not effectively represent.

Under the adopted policy, the procedure for share establishment in these areas for use during the period FY 1986–1990 will use small business purchase history from the period FY 1981–1985. When a share changes 5 share percentage points or less, surplus or deficit volumes accrued during the 5-year period will carry forward. Where a share change exceeds 5 share percentage points, one half of the surplus or one half of the deficit volume will be carried forward. This procedure will dampen the impact of market fluctuations during the 5-year period. Where a share change exceeding 5 share percentage points occurs in a market area where salvage operations have significantly disrupted normal purchase patterns, the full surplus or deficit volume may be carried forward.

Where structural changes occur in industry size classes during the period and the recomputed share changes over 5 share percentage points from the previous share, the surplus or deficit volumes will be dropped and not carried forward to the next computation period. Where the recomputed share changes less than 5 percentage points from the previous share, the surplus or deficit volumes will be carried forward to the next computation period.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations. Examples of unique circumstances include catastrophic natural events which disrupt normal operations or an event which causes substantial damage to a processing facility results in abnormal delay in repairs.

Implementation of this policy recognizes and provides for the geographic similarity of market conditions during the 5-year period recognized structural changes which occurred.

5. *Recomputation of Shares in FY 86—Region 5 (Pacific Southwest) and Remaining National Forests in Region 6 (Pacific Northwest).* The proposed policy would have compared shares established in 1981 in these Regions with the small business harvest history for 1975–1979. The shares would have been maintained, except where the difference exceeded 10 percent. Then the new share would have been set halfway between the current share and the harvest history for that period. Structural changes in the industry since 1980 would have followed the same policy as for Regions 1–4.

Generally, large business firms felt that the proposed policy recognized the market distortion which occurred during FY 1981–1985 and that the proposed procedure would represent a more stable situation. About one third of small business respondents agreed with this rationale, including two associations who represent small business firms. Those small business respondents who opposed the proposed policy either wanted no change in the program or felt that data from other years would better reflect actual market conditions. Some small business firms and the associations representing small business argued for the need to use recent data for recognizing structural changes in the industry during FY 1981–1985. A few small business firms in Region 5 felt that a more stable situation existed in that Region during FY 1981–1985 and that purchase history or purchase and harvest history for that period would better reflect actual market conditions.

The Forest Service agrees that the FY 1981–1985 period distorted the market patterns which normally occur in Region 5 and the remaining portion of Region 6, and that adoption of the proposed policy would better recognize a more normal situation. The agency agrees with those who propose a special procedure to

recognize structural changes in the industry between FY 1981–1985.

Therefore, under the adopted policy the shares established for use in Region 5 and the remainder of Region 6 during the period FY 1986–1990 will generally remain the same as those established in 1981, which used small business purchase history from the period FY 1976–1980. However, in market areas where the small business harvest hstory for FY 1975–1979 differed from the established share by more than 10 percentage points, the small business share will be set half way between the current share and the small business harvest history for that period.

Where structural change occurred during the period 1981–1985, recomputation of the small business share will be based on the small business purchase and harvest history during this period. Surplus and deficit volumes will be carried forward when shares change 5 percentage points or less. Surplus and deficit volumes will be dropped when shares change over 5 percent.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations.

This policy recognizes the market distortions during the FY 1981–1985 period which caused abnormal purchase and harvest operations. It serves to stabilize the market shares to the previous period, which was a more normal 5-year period, except where recognized structural changes have occurred.

B. Future Share Changes

1. *Regions 8, 9, and 10.* The proposed policy would have continued the current system of establishing shares and have commissioned a two-year study by Forest Service and SBA to determine the need to change the program in Regions 8 and 9. In Region 10, the set-aside program would have continued to operate based upon a volume quota basis.

This proposal received little comment, except support for completing the study promptly and to ensure that the study does not lead to adoption of restrictive conditions.

The Forest Service and SBA will complete a study within the next two years which will determine whether changes are needed for future share recomputations in these Regions.

2. *All Other Regions.* The proposed policy would have stabilized shares at current levels in all market areas. However, where a structural change occurred, shares would have been adjusted at the start of the 6-month period beginning at least 12 months after the change occurred. The basis of change would have been the average of the percentages of purchase and harvest history for the past 5 years. No further recomputations would have occurred.

Large business strongly supported these proposed changes. Large business desired prompt recognition of structural change, generally 12 to 18 months after it occurred, and supported use of purchase and harvest data for the 5 years preceeding the change. Some individuals suggested various options which use different data and time periods. Small business uniformly opposed this proposal or suggested a changed procedure. Small business emphasized that the small business share belongs to the small business community-at-large and not to individual entities. Assigning a share to individual mills would add value to them and encourage speculation. Many small business respondents supported a recomputation procedure jointly developed by two of the associations which represent small business. The procedure developed by the associations would have based recomputation of small business shares on a combination of small business purchase history and weighted average small business purchase and harvest history. The process would compare both small and large business share and carryover volume amounts.

The Forest Service agrees with both large and small business respondents who propose use of both purchase and harvest history to recompute the small business share. This reflects the relationship of volume of timber purchased to actual need over a 5-year period. The agency agrees with those elements of the recomputation procedure proposed by small business which deal with harvest to purchase performance. However, the agency disagrees with the desirability of making a comparison between the performance of large and small business firms. The Forest Service also agrees with the need to recognize structural change in market area industries and to reflect the change with an adjustment period shorter than 5 years. Also, recomputation procedures must recognize unique situations mentioned by some respondents and provide for them.

In consideration of these views, the final policy will apply the following procedure for recomputing the small business share for a market area to scheduled recomputations and to those following structural changes in the industry between regular recomputation periods:

a. *Regular Scheduled Recomputations.* Normally, a scheduled recomputation will occur every 5 years and will use the past 5 years record of sawtimber purchase and harvest data as a basis.

Small business shares will be recomputed using the weighted average purchase and harvest history for small business firms in each market area. For purposes of share calculation, harvest history is based on actual deliveries of sawlog timber to small or large business firms for processing. Data for this calculation will be obtained from the 6-month reports submitted by purchasers for log export control. Carryover of surplus or deficit volumes from the previous period will be based on small business harvest performance. Exhibit 1 displays how harvest performance, calculated as a ratio of harvest to purchase, will be used to adjust carryover volumes.

b. *Recomputation Due to Structural Change.* Shares will be recomputed following structural change. Use exhibit 1 to adjust carryover volumes. The procedure is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Ordinarily, small business shares will be recomputed approximately 3 years after a structural change occurs, based on the purchase and harvest history for that 3-year period. When a recomputation for a structural change would occur within a year of a scheduled recomputation, the scheduled recomputation would be skipped.

3. *Special Recomputations.* Unique situations may develop which require special recomputations and departure from the established procedure. In such cases the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situation. The Forest Supervisor will solicit the views of firms operating within the market area before submitting a proposal to deviate from the normal recomputation process to the Regional Forester for approval.

In periods of significant market decline, Forest Supervisors will monitor harvest patterns of both small and large business by comparing harvest to purchase volume. Where both follow a similar pattern, the Forest Supervisor will adjust the effects of harvest performance criteria on carryover

volume in conjunction with share establishment.

Departure from the standard procedure may also be warranted in the event volumes harvested by either large or small firms vary significantly from normal patterns in the market area as a result of salvage operations, a switch of harvest operations between market areas or ownerships, or other factors. Where such departure from the standard procedure is warranted, it may be achieved by adjusting carryover volumes, adjusting the time period, or by other means.

Implementation of policies in paragraph 2 (a) & (b), and (3) above will moderate the impact of short-term purchase and harvest fluctuations and their influence on the small business share. Inclusion of harvest history in recomputation recognizes the balance needed between purchase and harvest experience in share establishment. Use of both elements more accurately reflects actual raw material needs. The procedure permits recognition of structural change. The policy also helps stabilize market area shares in a responsive manner, and identifies unique situations which require special consideration.

C. Purchases by Non-Manufacturers

1. *Regions 8, 9, and 10.* Under the proposed policy the Forest Service would have retained the current procedure for allocating purchases by non-manufacturers to large and small businesses based on the anticipated size of the processor.

Nearly all comments supported the current procedures for allocating purchases by non-manufacturers. Sale procedures in Regions 8 and 9 provide for purchase of sales based on pre-sale measurement with no further measurement to determine actual harvest volume. The current method of anticipating delivery of sale volume to the respective size class of the processor best applies.

The Forest Service will retain the current procedure. Part of the planned Forest Service-Small Business Administration study will include review of this procedure and evaluation of alternatives which may more accurately identify delivery source.

This policy recognizes the current method used to offer sales in Regions 8 and 9 and its relationship to tracking non-manufacturer volume to small and large firms. The policy also recognizes the need to evaluate,these procedures, particularly in light of the manufacturing requirements discussed in paragraph F.3 below.

2. *Regions 1-6.* The proposed policy would credit harvest volumes in the 6-month program analysis based on actual deliveries to small or large business from open sales purchased by non-manufacturers.

Both large and small business support the proposal to credit sale volume purchased by non-manufacturers based on harvest records of delivery. Some large businesses wanted volume credited to the size class of the company processing the timber at the end of the period. Small businesses generally suggested a 3-year rolling average for harvest deliveries. A lesser number suggested use of an overall average with periodic corrections.

The new policy will use current reporting requirements for export control to monitor non-manufacturers' delivery of volume. Use of a 2-year rolling average, updated every 6 months, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class. For each 6-month period, application of the calculated percentage to open sale volume purchased by non-manufacturers will develop the volume accrued to small business in order to determine set-aside needs for the next 6-month period.

This policy will result in more accurate assignment of non-manufacturer-purchased sale volumes and guard against short-term cyclic changes in deliveries.

D. Triggering of Set-Aside Sales

1. The proposed policy would have retained current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more. However, under the proposed policy, only a fractional change over 10 percent would not have triggered a set-aside program.

Both large and small business strongly supported continuance of the current procedure for initiating set-aside sales. However, small business strongly objected to dismissing a set-aside trigger if it occured by only a fractional amount. They argued that use of the 10 percent figure precisely defines the thresholds and avoids further interpretation.

The Forest Service agrees with these comments and will continue the current policy of initiating a set-aside program whenever small business fails to purchase their share by 10 percent or more and has dropped the fractional amount provision. Use of an exact percent amount will simplify administration of the set-aside program.

2. The current policy places no limit on the timber volume set-aside during each 6-month period. The proposed policy would have retained the existing process of setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at lest 20 percent of the timber volume in each 6-month period would have been open sales.

Comments supported setting aside the deficit plus the small business share when the need to establish a set-aside program resulted and to provide at least 20 percent of the volume in a 6-month set-aside period as open sales. Some large businesses favored setting aside only the deficit. However, analysis has shown that this would not provide assurance that small business firms would have the opportunity to purchase the established small business share in a market area.

Therefore, the policy will be implemented as proposed. However, the Forest Supervisor may elect to use two 6-month periods to eliminate the deficit volume situation. If not eliminated by this time, the Forest Supervisor will act to eliminate it in the next 6-month period, subject to the 20 percent of open sale volume limitation.

This policy continues to recognize the advisability of eliminating a trigger situation requiring set-aside sales as rapidly as possible. It also recognizes the need to provide opportunities for larger business to participate in the market each period.

E. Selection of Set-Aside Sales

The proposed policy would have continued the current procedure where the Foret Supervisor selects set-aside sales with the concurrence of the local SBA representative. Under the proposal, the tentative selection of set-aside sales in case of a triggered program would occur 60 days prior to the start of the next 6-month period.

This proposal received significant support, although a few large businesses wanted sale selection only by the Forest Service.

The final policy adopts the proposed sale selection process. Forest Supervisors will initiate the selection of tentative set-aside sales early enough to reach agreement with the local SBA representative 60 days prior to the start of the next 6-month period. If agreement cannot be resolved at the local level, the SBA may seek review by the Regional Forester. If not resolved at that level, the issue will be submitted to the Washington Office of the two agencies for resolution. Following review, the Chief of the Forest Service will make the decision.

This procedure will result in early selection of set-aside sales, help establish a firm timber sale program at the beginning of the 6-month period, allow development of a more orderly sale program well in advance of each 6-month period, and should avoid delays in sale offerings.

F. Manufacturing Requirements on Set-Aside Sales

1. Current policy requires that 70 percent of advertised volume from set-aside sales be processed in a small business facility. The proposed policy would have continued enforcement of the 70/30 rule except in Regions 8 and 10.

There was strong support for enforcement of the 70/30 rule.

The policy will continue for all Regions except Regions 8 and 10. Purchasers of set-aside sales may deliver no more than 30 percent of advertised sawtimber sale volume from set-aside timber sales to large businesses for manufacture. Continuance of the policy permits needed flexibility for purchasers to market their products.

2. The proposed policy would have continued the 50/50 rule for set-aside sale timber in Region 10 and received limited, but highly favorable, comment. Therefore, in Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised volume of a set-aside sale to a large business for processing. This policy recognizes the greater marketing flexibility needed in this unique market environment.

3. The proposed policy would have required a 100 percent rule for set-aside sale softwood sawtimber and a 70/30 rule for hardwood sawtimber in Region 8. Currently, the 70/30 rule applies to all sawtimber.

An association which represents small business in Region 8 supported the proposed policy on manufacturing requirements for softwood and hardwood sawtimber. However individual comments from some large businesses and ⅓ of individual small business respondents operating in the Southern Region opposed 100 percent delivery of set-aside softwood sawtimber volume to small business manufacturers. Arguments against 100 percent delivery included inability of some purchasers to dispose of all softwood sawtimber products, reduced opportunity to let special products seek an appropriate level of product use, and elimination of log trading between large and small mills to obtain special raw materials used by each. The Forest Service believes that adequate markets exist with small business firms to provide competitive markets for southern pine sawtimber. The 70/30 rule which applies to all other species of sawtimber will permit marketing flexibility. Therefore, in Region 8, the adopted policy will require that purchasers deliver 100 percent of the southern pine sawtimber purchased on set-aside sales to small business processing facilities, but the 70/30 rule will apply to all other coniferous species and to all hardwoods. For these, purchasers of set-aside sales may deliver up to 30 percent of the advertised sawtimber volume to large business processing facilities.

This policy assures delivery of set-aside volume to small business facilities, makes enforcement of requirements for processing of set-aside sale volume easier where southern pine species prevail, and yet provides marketing flexibility for hardwoods and other coniferous species.

Of the few who commented on enforcement provisions to ensure strict compliance with new manufacturing requirements, nearly all supported strong enforcement and prompt penalties for violations.

The Forest Service will work with SBA to develop enforcement through agency policy and small business qualification process. In addition, the Forest Service will examine contractual provisions which require reporting of log delivery and will develop appropriate measures to deal with violations.

G. Special Salvage Timber Sale Program (SSTS)

The current policy places undue restriction on the Special Salvage Timber Sale Program (SSTS). The proposed policy would have removed the 70/30 manufacturing requirement for sales set-aside under the special salvage program. Also, timber volume from this program would not have been included in calculations for the regular timber set-aside program.

Large business strongly supported the proposal to discontinue inclusion of the special salvage program with the regular set-aside program and to eliminate the 70/30 manufacturing requirement. Small business substantially supported the proposal. Comments against it cited the need to assure that small business facilities receive a meaningful supply of timber.

On February 15, 1985, following publication of the Forest Service proposed policy changes, the SBA published a final rule at 50 FR 6337 which eliminated the 70/30 manufacturing requirement for the special salvage program. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program or in recomputation of shares after the scheduled recomputation at the end of fiscal year 1985.

This policy permits maximum flexibility for small operators to market their products. It also eliminates recordkeeping for the recomputation process and operation of the 6-month set-aside program.

Impacts

This policy has been reviewed against the objectives and criteria of Executive Order 12291 and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This change in policy will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this final policy would not have significant economic impact on a substantial number of small entities. The policy will continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The policy requires the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This final policy will not significantly affect the environment. Therefore, an environmental impact statement has not been prepared. Furthermore, the final policy will not result in additional information collection requirements and, therefore, it has not been submitted for review under the regulations at 5 CFR Part 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber Sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more

effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments to the proposed changes published in the **Federal Register** have influenced the final policy. The final policy to be implemented has substantial support in the agency record, viewed as a whole, and full attention has been given to the comments of persons directly affected by the policy in particular. The revised program will be set forth in a forthcoming revision of the Forest Service Manual.

Dated: June 6, 1985.

R.M. Housley,

Acting Chief.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES

Small business weighted average purchase and harvest percent causes	Small business harvest to purchase ratio of	Result on share and carryover volume
1. Increase over current share which exceeds 5 share percentage points.	A. .90 ratio or more	Adopt weighted average purchase and harvest percent. Drop surplus carryover.
	B. Less than .90 ratio	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover.
2. Decrease from current share which exceeds 5 share percentage points.	A. .90 ratio or more	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover.
	B. Less than .90 ratio	Adopt weighted average purchase and harvest percent. Drop deficit carryover.
3. Increase or decrease from current share of 5 share percentage points or less.	A. .90 ratio or more	Retain current share. Drop all carryover.
	B. Less than .90 ratio	Retain current share. Retain ½ surplus carryover.

[FR Doc. 85-14241 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Environmental Impact; Upper Quaboag River Watershed, MA, Supplemental Watershed Plan No. 6

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Quaboag River Watershed, Supplemental Watershed Plan No. 6, Worcester, Hampden and Hampshire Counties, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Rex O. Tracy, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts, 01002, telephone (413) 256-0441.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rex O. Tracy, State Conservationist, has determined that the preparation and review of the environmental impact statement are not needed for this project.

The project involves reducing the problems associated with erosion and sediment and animal waste management and includes reducing the impact on water quality from agricultural non-point pollution in the Upper Quaboag River Watershed.

The planned works of improvement includes installation of erosion control measures on 860 acres of eroding cropland and of animal waste management systems on about 15 farms in the watershed. These systems usually include animal waste storage structures, milkhouse waste facilities and barnyard runoff control measures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rex O. Tracy.

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

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 31, 1985.

Rex O. Tracy,

State Conservationist.

[FR Doc. 85-13655 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-16-M

Okanogan National Forest Grazing Advisory Board; Meeting

The Okanogan National Forest Grazing Advisory Board will meet at 7:30 p.m., July 16, 1985 at the Supervisor's office, 1240 South Second Avenue, Okanogan, WA 98840. The agenda for the meeting is to finalize and approve By-Laws and continue discussion about allotment boundary fence ownership and required construction by permittees.

The meeting will be open to the public. Persons who wish to attend should notify Don Pridmore at the above address or call 509-422-2704. Issues to present to the Board must be in writing and may be filed with the committee before or after the meeting.

The committee has estabilised the following rules for public participation: Public comments will be heard during the first 30 minutes of the meeting.

Rollin Whited,

Acting Forest Supervisor.

June 6, 1985.

[FR Doc. 85-14309 Filed 6-12-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-404]

Oil Country Tubular Goods From Mexico; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review

and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on oil country tubular goods from Mexico. The review covers the period from October 1, 1984. The petitioners and other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47054) a countervailing duty order on oil country tubular goods from Mexico.

The petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Corporation, and other domestic interested parties, U.S. Steel Corporation, Babcock and Wilcox, and Armco, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of oil country tubular goods currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on oil country tubular goods from Mexico provide a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the domestic parties, there is good cause (as requried by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on oil country tubular goods from Mexico effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of oil country tubular goods from Mexico which were entered, or withdrawn from warehouse for consumption prior to October 1, 1984 and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested. Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41 355.42).

Dated: June 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–14256 Filed 6–12–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Exxon company, U.S.A. From Objection of the California Coastal Commission to Santa Ynez Unit Development and Production Plan

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Stay of Appeal.

SUMMARY: Effective March 1, 1985, the Secretary of Commerce (Secretary) granted the request of Exxon Company, U.S.A. (Exxon) to stay, for an indefinite period, further consideration of Exxon's appeal to the Secretary from the California Coastal Commission's objection to Option A of Exxon's proposed Oil and Gas Development and Production Plan for the Santa Ynez Unit, Santa Barbara Channel, California.

The Secretary's decision to grant the stay was based on the progress made by Exxon, the County of Santa Barbara and the California Coastal Commission in resolving their differences regarding the development of the Santa Ynez Unit. The appeal was filed pursuant to 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), and implementing regulations at 15 CFR Part 930, Subpart H.

The appeal is stayed until dissolved at the Secretary's discretion. In such event, notice will be provided setting forth the schedule for further consideration of the appeal, including the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Joan M. Bondareff, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; (202) 254–7512.

SUPPLEMENTARY INFORMATION: For further information regarding Exxon's appeal, see the notices published in the **Federal Register**, November 19, 1984 (49

FR 45637); October 12, 1984 (49 FR 40072); March 6, 1984 (49 FR 8274); August 31, 1983 (48 FR 39483); and August 5, 1983 (48 FR 35692).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: June 6, 1985.

Timothy R.E. Keeney,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-14221 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by National Welders Supply Company From Objection of the North Carolina Department of Natural Resources and Community Development to Proposed Wetlands Fill

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Stay of Consideration.

SUMMARY: On May 21, 1985, National Welders Supply Company (National Welders) appealed to the Secretary of Commerce (Secretary) from an objection by the North Carolina Department of Natural Resources and Community Development, (DNRCD) to National Welders' proposed welding supply store and industrial gas transfill plant requiring an Army Corps of Engineers permit to fill approximately 0.5 acre of wetland near the Cape Fear River, Wilmington, North Carolina. This appeal has been filed pursuant to subparagraph (A) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations at 15 CFR Part 930, Subpart H.

Concurrent with its consistency appeal, National Welders requested that the Secretary stay consideration of the appeal pending its negotiations with DNRCD to resolve the consistency objection. The Secretary has granted National Welders' request, and the appeal is stayed until August 5, 1985 unless the stay is dissolved earlier at the Secretary's discretion. At such time as the stay is dissolved, notice will be provided setting forth the schedule for further consideration of the appeal, including the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Joan M. Bondareff, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; (202) 254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: June 6, 1985.

Timothy R.E. Keeney,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-14222 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries and Sovereign Authorities of the Netherlands

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under Section 914 of 17 U.S.C. to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517-9 and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On June 3, 1985, the Patent and Trademark Office received a request from the Government of the Netherlands for the issuance of an interim order complying with the aforementioned guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to the Netherlands for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985, registration cut-off date for chips first commercially exploited on or after July 1, 1983, a date is being set for the submission of comments in accordance with paragraph F(a).

DATE: Comments must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on June 18, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231.

Materials submitted will be available for public inspection in Room 11C28 Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded: (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection: (A) On substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works: (i) Of owners who are, on the date on which the mask works are registered under section

908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, Section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On June 3, 1985, a petition for the issuance of an interim order under 17 U.S.C. 914 was received from the Government of the Netherlands. The petition, including supplemental information, is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice. Two annexes to the petition are not published as part of this notice; a letter from the Netherlands Ministry of Justice to Dr. Arpad Bogsch, Director General of the World Intellectual Property Organization, dealing with copyright protection of computer programs; and a report from the Netherlands Public Prosecutions Department dated August, 1984, dealing with piracy of copyrighted works. These annexes are available for public inspection as part of the record of this proceeding in the Patent and Trademark Office.

In remarks in the *Congressional Record* of October 3, 1984 at page S12919 and of October 10, 1984, at page E4434 both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress . . . , the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity." Further, they both acknowledged that for the issuance of an interim order for "those countries already having a system allowing mask work protection . . . expedited action may be particularly appropriate to encourage and facilitate international comity."

I am considering issuing an interim order on an expedited basis extending the protection of the SCPA to the nationals, domiciliaries and sovereign authorities of the Netherlands, in accordance with the suggestion that such action would be appropriate in instances where a nation has "a system allowing mask work protection." Public comment on the request of the Government of the Netherlands and the supporting material will be considered if received in the Office of the Commissioner of Patents and Trademarks on or before 5:00 P.M., June 18, 1985.

Dated: June 10, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

May 16, 1985.

Commissioner of Patents and Trademarks,
Box 4, Washington, D.C. 20231

Dear Sir, On 3 January 1985 the Semiconductor Chip Protection Act of 1984 (hereafter referred to as "the Act") entered into force in the United States of America. It provides for a new form of protection for mask works of semiconductor chips against, inter alia, unauthorized reproduction.

Under section 902 of the Act, the protection is made available to US nationals and domiciliaries as well as to nationals, domiciliaries or sovereign authorities of a foreign nation that is a party to the treaty affording protection to mask works to which the United States is also a party.

By presidential proclamation the protection can also be extended to citizens of a foreign nation whenever the President finds that this nation extends protection to mask works of owners who are nationals or domiciliaries of the United States on (A) substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation or (B) on substantially the same basis as does the Act.

In section 914 of the Act a transitional provision has been included permitting the Secretary of Commerce to issue, upon the petition of any person or upon the Secretary's own motion, an order extending protection to such foreign nationals, domiciliaries and sovereign authorities for 3 years from the Act's enactment if he finds

(1) That the foreign nation is making good faith efforts and reasonable progress toward:

(a) Entering a treaty with the United States on the subject, or

(b) Enacting legislation of a kind on which the President could later rely to extend the protection of this Act indefinitely, and

(2) That the nationals, domiciliaries and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works, and

(3) That issuing the order would promote the purposes of the Act and international comity with respect to the protection of mask works.

Due to the urgent need for the chip industry in The Netherlands to be in the position to protect its mask works under the U.S. Semiconductor Chip Protection Act of 1984, I would ask you on behalf of the Netherlands Government to issue an order extending protection under the Act to nationals, domiciliaries and authorities of The Netherlands.

Having regard to the conditions formulated in section 914 of the Act and in the Guidelines for the submission of applications for interim protection of mask works under 17 U.S.C. 914, The Netherlands Government is of the opinion, on the following grounds, that the privilege of interim protection can in any case be extended to nationals, domiciliaries and authorities of The Netherlands.

With regard to the first condition formulated in the Act and in the aforementioned Guidelines (the foreign nation is making progress—either by treaty or by legislative enactment—toward a regime of mask work protection generally similar to that under the Act) I would make the following observations.

Under both Dutch legislation (notably the Copyright Act of 1912 and article 1401 of the Civil Code) and Dutch case law, mask works that are fixed in semiconductor chips are eligible for protection comparable to that provided under the Semiconductor Chip Protection Act. It is true that no statutory regulations in The Netherlands relate specifically to mask works fixed in

semiconductor chips, but both the Copyright Act of 1912 and the law of tort based on article 1401 of the Civil Code provide scope for protection of such works corresponding to that provided under the Semiconductor Chip Protection Act.

As regards the Copyright Act of 1912 (an English translation of which is enclosed) and the case law based upon it, I would state the following. Article 1 defines copyright as the exclusive right of the author of a literary, scientific or artistic work, or of his assignees, to make such work public and to reproduce it. Copyright terminates on the expiration of a term of 50 years from the first of January of the year following the year of the death of the author (article 37).

In accordance with the Berne Convention, no formality has to be completed for a work to be protected by copyright. The act of creating the work is sufficient for the author's copyright to subsist. The Copyright Act does not explicitly state what requirements a work must meet in order to be eligible for copyright protection, but a number of such requirements have crystallised in case law. For example, the work must be in a form in which it is directly or indirectly perceptible to the senses, although this need not be a material form. In its ruling of 28 June 1946 (Nederlandse Jurisprudentie, hereafter referred to as Dutch Law Reports 1946, 712) the Supreme Court of The Netherlands, the highest court in the land, stated that only the outward form which expresses that which inspired the author to undertake his work is subject to copyright. Thus where there is no outward form there is no "work" as referred to in article 1 of the Copyright Act. The work should thus have an individual or personal character. This requirement of originality expresses the idea that the work must be the result of the author's creative activity, in however slight a degree. A "work" is deemed to subsist if it is the result of a personal decision by the author to express his ideas in a particular manner.

The requirement that the work should be of an individual and personal character and should express what inspired the author to undertake it (Supreme Court of The Netherlands, 28 June 1946, Dutch Law Reports 1946, 712) does not mean that the work must possess artistic merit. The question of whether a work is of literary, scientific or artistic significance is irrelevant for the purposes of establishing whether that work is protected by copyright.

Article 10, paragraph 1, of the Copyright Act (see enclosed copy) enumerates some of the works which are included in the definition of "literary, scientific or artistic work" for the purposes of the Act. Among them are books, pamphlets, newspapers, periodicals and all other writings, drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like, photographic and cinematographic works and works produced by analogous processes. The fact that the list is not intended to be comprehensive is apparent from the closing words of the paragraph in which it appears: ". . . and genereally any production in the literary, scientific or artistic fields, irrespective of the mode or form of its expression". Thus the types of work mentioned by name in article 10 are intended purely as examples of what may be regarded as literary, scientific and artistic works.

Because the term "work" is not precisely defined in the Copyright Act, new and previously unknown types of work which originate from scientific and technological advances are not excluded from copyright protection provided that they meet the general requirements of perceptibility and originality. In the event of a dispute between the author of a particular work and a third party on the question of whether the work falls within the purview of the Copyright Act, the matter will have to be submitted to the judgment of a court, which will base its deliberations on the norms of case law and legal doctrine set forth above. The same in fact applies in respect of works of a type amongst those enumerated in article 10.

An illustrative example of a new type of work which, according to case law, is eligible for protection under the Copyright Act is computer software. Since 1981 it has been established case law that software can be protected. (President of Zwolle District Court, 22 July 1983, Kort Geding (hereafter referred to as Interlocutory Injunctions) 1983, 246; Assen District Court, 28 July 1981, Dutch Law Reports 1982, 74; 's-Hertogenbosch District Court, 30 January 1981 and 14 May 1982, Bijblad Industriële Eigendom ((B.I.E.: Industrial Property Supplement) 1983, no. 98, p. 323, GRUR Int. 1983, 669; President of Utrecht District Court, 10 March 1982, B.I.E. 1983, no. 99; President of Amsterdam District Court, 8 October 1982, B.I.E. 1983, no. 100; President of Amsterdam District Court, 24 March 1983, B.I.E. 1983, no. 101; Amsterdam Court of Appeal, 31 March 1983, Tijdschrift voor Auteursrecht en Mediarecht (Copyright and Media Law Journal) 1983, p. 56; Amsterdam Court of Appeal, 21 June 1984, Computerrecht (Computer Law) 1984, 3, p. 21; President of Roermond District Court, 20 August 1984, Interlocutory Injunctions 1984, 266; Arnhem Court of Appeal, 27 October 1983, Dutch Law Reports 1984, 80; Amsterdam District Court, 19 December 1984, Computerrecht no. 4, p. 31).

For your information, a copy of a letter of 19 October 1983 from the Netherlands Minister of Justice to Dr A. Bogsch, Director-General of the World Intellectual Property Organization is enclosed. It explains the legal situation in the Netherlands as regards to protection of computer software, citing some of the above rulings.

Those rulings confirm that computer programmes are in principle copyright works. However, in each individual case it will be for the court to determine whether the programme meets the general requirements of perceptibility and originality laid down in the Copyright Act. In the cases listed above, the courts concerned found that these requirements had been met.

With regard to the requirement of perceptibility I would further refer to a consideration from the above interlocutory judgement by 's-Hertogenbosch District Court of 30 January 1981, stating that the fact "that the form of a computer programme is of little importance does not alter the fact that the programme imparts a perceptible form to an intellectual production, which form, despite the relative insignificance it may be found to possess, nonetheless has the protection of copyright". The contentious issue in the case in question was whether a standard loghook intended for data point computers had been reproduced. The defendant admitted having seen the inclusions of the plaintiff's programme but not the sources.

The question of whether a computer programme may be deemed to constitute an original work in an individual case has been answered in the affirmative in case law, sometimes on the basis or reports by experts. The relevant case law has dealt with the protection not only of software itself but also of the associated manuals (e.g. President of Roermond District Court, Interlocutory Injunction of 20 August 1984, Interlocutory Injunctions 1984, 266). Such manuals are naturally covered by copyright.

In addition to the broad concept of a "work" as being subject to protection, the Copyright Act also uses the term "make public" and "reproduce", both of which can likewise be interpreted broadly and which are the exclusive rights of the author or his assignees. The Copyright Act does not contain an exhaustive list of the actions which may be subsumed under these terms. "To make public" and "to reproduce" are pormanteau terms which may cover numerous actions.

The way in which the Copyright Act operates is as follows: it uses the terms "make public" and "reproduce" in their everyday sense, without defining them. Articles 12 to 14 give examples of actions which are deemed for the purposes of the Act to be covered by the two terms although they may not be so covered according to everyday usage. Pursuant to the first paragraph of article 12, publication of a literary, scientific or artistic work includes the publication of a reproduction of all or part of the work, the distribution of all or part of a work or of a reproduction thereof, so long as the said work has not appeared in print, and the public recitation, performance or presentation of all or part of a work or of a reproduction thereof. Pursuant to article 13 of the Copyright Act, the reproduction of literary, scientific or artistic work includes translation, arrangement of music, cinematographic adaptation or dramatization, and generally any partial or total adaptation or imitation, in a modified form, which cannot be regarded as a new and original work.

Article 14 further specifies that the reproduction of a literary, scientific or artistic work includes the recording of all or part of the work on an article intended for causing a work to be heard or seen.

The list of actions—albeit not exhaustive—deemed pursuant to articles 13 and 14 to fall under the definition of reproduction implies, inter alia, that the copyright-holder has the exclusive right to convert a two-dimensional preliminary form into a three-dimensional form and vice versa. In this respect the definition of "reproduction" in the Netherlands Copyright Act is comparable, for example, to that given in section 48 (1) of the British Copyright Act: "Reproduction, in the case of a literary, dramatic or musical work, includes a reproduction in the form of a

record or of a cinematograph film and, in the case of an artistic work, *includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form*, and references to reproducing a work shall be construed accordingly". The relevance of this to the protection of mask works is obvious.

In this connection I would refer to a judgement by the President of Zwolle District Court of 22 July 1983 (B.I.E. 1983, no. 102). The case in question related to the pirating of a cattle recognition system. The defendant had produced in imitation of the plaintiff's cow transmitter. The electronic part thereof, the "print" (printed circuit board) with the components mounted on it, was, as the defendant admitted, an exact copy (save for a few minor details) of the corresponding components of the plaintiff's cow transmitter.

The plaintiff applied for an interlocutory injunction, alleging, inter alia, that the defendant had infringed the plaintiff's copyright on the print and the associated diagrams and drawings. The defendant had given a written undertaking not to copy and/or place at the disposal of third parties the diagrams and drawings of the cow transmitters, but had failed to honour that undertaking.

The President of the District Court ruled that it could not be denied that a certain amount of creativity had gone into the print with the components. "It is a well-known fact that in electronics many roads lead to Rome, and that there is no obvious reason to take one rather than another, so that it is easy but by no means necessary to choose the same route as another designer. This is again apparent from the fact that the defendant required some six months to develop a print which at first sight was different but in which the basic requirements for a cow transmitter nevertheless remained unchanged."

On the basis of these considerations, the President concluded that, as an industrial design, the print with the components was in principle subject to copyright.

The system followed in the Netherlands Copyright Act, with its open terminology subject to broad interpretation, differs from most foreign legislation on copyright, which generally lays down the rights of copyright-holders explicitly and in the same manner defines the works which are subject to protection. An advantage of the Dutch system is that new exploitation techniques made possible by present-day technological developments can be included in the rights of the copyright-holder without the necessity of amending legislation. The case law cited above concerning the protection of computer software is a good example of this.

In view of the deliberate decision of the legislature in 1912 to opt for a system of open concepts such as "work", "make public" and "reproduce", to be defined in practice by case law, the Netherlands Government takes the view that there is no reason at the present moment to assume that mask works are not eligible for protection under the Netherlands Copyright Act of 1912; a protection which is certainly no less than that provided under the Semiconductor Chip Protection Act. In taking this view, the Netherlands Government assumes that designers of mask works face choices and make decisions which entail a certain measure of creativity and bear a personal character.

The Netherlands Government would observe that the Netherlands Copyright Act, unlike its United States counterpart, does not exclude useful articles from the protection of copyright (cf. 17 USC 101). This removes one of the main problems which faced the United States legislature in seeking to protect mask works buy copyright. See in this context pages 5 and 6 of report 98-781, House of Representatives, 98th Congress, 2nd Session, where it is observed that "copyright law has always considered a mask work to be purely utilitarian, and therefore outside the scope of copyright protection". The aforementioned article 10 of the Netherlands Copyright Act states that the term "literary, scientific or artistic works" includes works of applied art, drawings and industrial designs. Like any other copyright works, these must meet the criterion of originality.

In the view of the Netherlands Government, the fact that the application of copyright law to mask works takes copyright law into the industrial sphere is no reason to assume that the Copyright Act is inapplicable to such works. No such dividing line is drawn under Dutch case law. Aircraft designs, for example, which bear a personal character, are covered by copyright.

On the above grounds, the Netherlands Government believes that under the terms of the Netherlands Copyright Act a mask work can be defined as a "work" for the purposes of the Act, and a mask work fixed in a semiconductor chip as a "reproduction" as referred to in the aforementioned article 1. All this means that authors of mask works who are of foreign nationality are protected by the Netherlands Copyright Act in the same way as authors of mask works who are Netherlands nationals.

Given the open concepts employed in the Copyright Act, it should be noted that in the event of a dispute in the matter of whether a specific mask work is a copyright work within the meaning of the Copyright Act and of legal proceedings being brought to decide the issue, the court will be required to give a ruling as in the case of the protection of computer software.

The above issue has not so far been considered by a Dutch court. In view of the case law cited above with regard to the protection of computer software and of an electronic circuit implemented in a printed circuit board provided with electronic components and the flexibility of the Netherlands Copyright Act—which is apparent, inter alia, in the case law cited—the Netherlands Government anticipates that the above view as to whether mask works are eligible for copyright protection will be the generally accepted one.

If the applicability of copyright to mask works nevertheless should prove in practice to be uncertain or to give rise to particular problems, the Netherlands Government will certainly give thought to the possibility of amending the Copyright Act so as to resolve matters. The Government takes the same approach to the possible results of the international activities described below, notably those pursued within the framework of the European Economic Community and the World Intellectual Property Organization.

The law of torts pursuant to article 1401 of the Civil Code may also be of relevance to the protection of mask works in addition to or in lieu of copyright law. Article 1401 reads: "Any unlawful act as a result of which damage is caused to another person gives rise to an obligation on the part of the person through whose fault that damage has been caused to make restitution."

According to the case law of the Supreme Court of the Netherlands, using or profiting from the work or efforts of another person is in principle not unlawful provided that no statutory exclusive rights such as patent rights and copyright are infringed (Supreme Court, 26 June 1953, Dutch Law Reports 1954, no. 90; Supreme Court, 23 June 1961, Dutch Law Reports 1961, 423). Under certain circumstances, however, such action may nonetheless constitute a tort.

Such special circumstances may include:

(a) Copying in respects in which a different course could equally well have been followed without impairing the usability of a product or its suitability for the purpose for which it is intended;

(b) A disproportionate difference between the costs of the producer and those of the imitator;

(c) The other person's masterial was obtained in a manner which is illegal or morally reprehensible (e.g. involving the use of secrets known to an ex-employee by virtue of his former employment or sold to an unauthorised third party).

Proceedings pursuant to article 1401 have proved in practive to constitute an effective means of taking action against unauthorised copying of computer software and hardware.

In this connection the ionterlocutory judgement of the Vice-President of Amsterdam District Court (published in Interlocutory injunctions 1982, no. 194) is illustrative. In the case in question the plaintiff, Apple Computer Inc., alleged that the exterior of the computer marketed by the defendant was a virtually identical copy of the Apple II computer marketed by the plaintiff, and that this impression was further reinforced by the similar cream colours of the casing and the similarity of the plates bearing the trademarks. According to the plaintiff, the interior of the defendant's computer was likewise an exact copy of that of the plaintiff's Apple II computer. The defendant had presented this computer and the associated software at a trade fair.

The court took the view that the conduct of the defendant constituted unfair competition with the plaintiff and displayed a lack of the due care which thej defendant should have observed in competing against the plaintiff on the computer market. It was accepted by the court that the defendant was marketing a product, or intended to market a product, which was an exact copy of the plaintiff's Apple system both in its external design and in its technical specifications. Thus the defendant had created an unnecessary danger of confusion as a result of which the plaintiff had suffered damage (or was liable to suffer damage), it having already been

established to the court's satisfaction that the defendant's computer could have been designed differently both as regards the exterior, the similarity of which alone constituted sufficient grounds to justify a prohibition on the marketing of the product, and as regards the technical specifications, regardless of whether the plaintiff could be deemed to hold the copyright.

On the basis of the above, slavishly copying a mask work constitutes a tort, and an interlocutory injunction can be sought from the President of the District Court, possibly on pain of forfeiture of a recognizance by the defendant. [The injunction procedure is a summary civil procedure.] In practice this has been found to be a very effective means of taking action against unlawful acts by third parties.

On the above grounds, the Netherlands Government takes the view that both copyright law and case law on torts provide effective and adequate protection for mask works. The Government will nonetheless closely follow developments at national level (in case law and doctrine) and international level (notably in the EEC and WIPO) and will consider whether, in the light of these developments, there are grounds for amending the Copyright Act 1912 or taking other legislative measures. In particular, the results of the talks which are expected to be held shortly in the EEC and WIPO may influence its thinking on this point.

As regards the second condition (nationals, domiciliaries and sovereign authorities of the foreign nation and persons controlled by them are not engaged in the misappropriation, unauthorized disribution or commercial exploitation of mask works) I would observe that the Netherlands Government has no evidence that any such misappropriation, unauthorized distribution or commercial exploitation of mask works has concurred in the Netherlands or that Dutch nationals, domiciliaries or authorities have engaged in such practices. Nor does case law in the Netherlands indicate any such practices.

Dutch industry, and particularly Philips—a major producer of semiconductor chips in the Netherlands and Europe—has urged the Netherlands Government to take measures to protect the interests of the Dutch semiconductor chip industry in the light of developments in the USA (see enclosed letter of 23 November 1984). In the enclosed letter of 1 May 1985 from the Council of Central Entrepreneurial Organisations, this question was again brought to the attention of the Netherlands Government.

During the contacts which were established with representatives of Philips while preparing the present application, the second condition was also discussed. Philips said that they were not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works in the Netherlands and that they had not encountered practices which compelled them to take court action (see enclosed letter of 3 May 1985).

It may be noted here that an interministerial working party established by the Minister of Justice and including two representatives of the Public Prosecutions Department issued a report on piracy of copyright works in August 1984. Among the points which it considered in its report was piracy of computer software. During the hearings held by the working party in order to prepare its report, at which representatives of producers of semiconductor chips were also heard, no evidence was found that the above practices occur in the Netherlands in relation to these products.

It may be observed in this connection that the abovementioned report on piracy of copyright works contains proposals concerning policy on investigating and prosecuting offence under the Copyright Act 1912 and concerning the criminal provisions currently incorporated in the Act. The proposed amendments, like the criminal provisions currently in the Act, are couched in general terms, and would thus relate to all literary, artistic or scientific works and to all forms of publication or reproduction in violation of copyright. Among the working party's proposals is that the maximum penalties currently provided for by the Copyright Act should be made more severe. Another important proposal by the working party is that violation of copyright in a commercial or occupational capacity should be made a separate offence. A major proposal in the sphere of civil law is that it be made possible to ask a court to order a violator of copyright to pay to the plaintiff all profits accruing from the violation of the plaintiff's copyright. This proposal is in line with the civil law sanction provided for in section 911(b) of the Semiconductor Chip Protection Act. An English translation of the working party's report is enclosed. In the course of this year the Netherlands Government will make an official statement on the subject of the working party's proposals.

In this connection it may be added that insofar as piracy of products protected by intellectual property rights occurs in practice, the present aim of policy on investigation and prosecution is to combat this practice so far as possible. Many judgments have accordingly been given by the courts, notably in the field of video software. Such problems as arise in connection with the investigation and prosecution of offences under Copyright Act have been noted by the working party, and its report contains proposals for dealing with them.

In addition to criminal law, civil law also provides adequate scope for combating piracy. For example the Copyright Act provides for the seizure of works made public or reproduced in violation of copyright (article 28). The interlocutory injunction procedure provides a rapid and effective means of obtaining a court injunction restraining offenders from continuing to violate copyright (possibly on pain of forfeiture of a recognizance, which can be a considerable sum of money). Civil law procedures have proved to be an effective means of combating piracy in recent years.

At international level the Netherlands takes an active part in discussions in the various international forums concerned with piracy of works protected by intellectual property rights. In this connection mention may be made, inter alia, of the Council of Europe, the European Economic Community and the World Intellectual Property Organization. The Commission of the European Communities will be publishing a green book on copyright in the course of 1985, which will deal with piracy among other subjects. The Netherlands Government looks forward with interest to the exchange of ideas which will take place among the EEC Member States after the publication of this document.

The protection of semiconductor chips is receiving ample attention internationally. The Commission of the European Communities very recently issued a paper on the protection of integrated circuits and on the Semiconductor Chip Protection Act 1984 in particular. The paper suggests that the Community instrument relating to the statutory protection of integrated circuits be drafted in the very near future. In February 1985 the meeting of Directors-General for Industry approved this proposal. The Netherlands Government intends to be active in the work arising from the implementation of the proposal. The European Commission recently sent its comments on the Semiconductor Chip Protection Act to the United States authorities. It had also sent a note verbale to the Department of State on 28 September 1984. The Netherlands Government fully endorses the Commission's observations in these documents, notably as regarded the question of reciprocity.

The protection of integrated circuits is also under study within the framework of the World Intellectual Property Organization. A working paper on this subject is currently under preparation to implement a recommendation made in 1983 by the Committee of Experts on the Legal Protection of Computer Software (cf. LPCS–11/6, 17 June 1983, Annex 1, p. 2). At the meeting of the Group of Experts on the Copyright Aspects of the Protection of Computer Software in February 1985, the Director-General of WIPO stated that the drafting of this document would shortly be completed and that a meeting would be devoted to the subject in October of this year.

Representatives of the Netherlands Government will certainly participate in this discussion. The Government intends to examine the results of the international developments described above in order to decide whether there are grounds for introducing specific legislation to protect integrated circuits.

The Netherlands Government hopes that the present letter contains sufficient information on the legal situation with regard to the protection of mask works in the Netherlands.

On the grounds of the above, the Netherlands Government is of the opinion that legislation and the administration of justice in the Netherlands meet the requirements formulated in section 914 of the Semiconductor Chip Protection Act and in the Guidelines for the Submission of Applications for Interim Protection of Mask Works under 17 USC 914.

This being the case, I would ask you to issue an order extending protection under the

Act to nationals, domiciliaries and authorities of the Netherlands.

The Minister of Justice and the Minister for Economic Affairs, both of whom bear responsibility for the matter in question and the former for questions of copyright in particular, are prepared at any time to provide any further information which you may require in connection with this petition for interim protection.

Yours faithfully,

Minister for Foreign Affairs.

Corporate Patents and Trademarks

To the Minister of Justice,
Mr. F. Korthals Altes, P.O.B. 20301, 2500 EH The Hague.

AA82[a] (040) 743288 1984-11-23
NL
GALA/Ed

Re.: Chip design protection.

Your Excellency, On November 8, 1984 the President of the United States signed the "Semiconductor Chip Protection Act of 1984" as a new "Chapter 9" of the Copyright Act".

This sui generis protection for chip designs comprises a form of protection which includes both elements of the copyright and elements of the patent right. The fact that this Act is not included among any of the existing international treaties in the field of the intellectual or industrial property means that special attention is needed for the question of reciprocity. Apart from a form of interim protection provided for in the Act for non-USA-citizens, protection according to the new Act for "mask works" which are first exploited commercially outside the United States will apply to non-USA-citizens only if their own States permit a reciprocal form of protection for USA-citizens.

Your special attention is asked as regards the consequences and the measures to be taken for the Dutch chip industry. At short notice it is desired to assume a point of view as to how the interest of the Dutch chip industry is to be protected.

Questions which arise in this connection are:

—Can the Netherlands ask for a Presidential Proclamation based on comparable protection for chip designs in the Netherlands?

—Are the Netherlands to use the interim arrangement and to file a request required therefor?

All this has already come up for discussion in the Industrial Circles in UNICE and has already resulted in contact on these questions made with the European Committee (Mr. Charpentier). Contact has also been made with the Council of Dutch Employer's Unions VNO and NCW (inter alia through the Study Committee Industrial Property).

Since it will be endeavoured by UNICE already on January 21 next to form an idea of the situation and opinions, respectively, existing on this subject in the various European countries, we would request you to ascertain within your Ministry the extent to which orientation on this matter can take place at short notice.

In order to expedite matters, the undersigned has sent a copy of this letter, with some documents for further information on the subject, to Mr. E. Lukács of your Ministry.

The same letter has been sent to the Minister of Economic Affairs so that attention on this matter is also ensured from that side already at an early step.

Awaiting your reply,

Yours faithfully,

Philips International B.V.,
Corporate Patents and Trademarks.

Ir. J.E.M. Galama

N.V. Philips' Gloeilampenfabrieken

To the Minister of Justice,
Postbox 20901, 2511 EX The Hague.

(040) 7 3rd May 1985

Re: Semiconductor chip protection.

Your Excellency, With respect to the request to the U.S. Secretary of Commerce by the Government of the Netherlands for the issuance of an order to extend protection under the semiconductor chip protection act of 1984 to foreign materials, domiciliaries and sovereign authorities I herewith inform you that N.V. Philips' Gloeilampenfabrieken and its subsidiaries (hereafter "Philips") insofar as can be determined, are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works in the Netherlands and that they were not confronted with practices which compelled Philips to take court action.

Copy of this letter will be sent to the Secretary of the Department of Economic Affairs.

Yours faithfully,

J.H.M. Paulussen,

General Secretary, N.V. Philips' Gloeilampenfabrieken.

Council of Central Entrepreneurial Organisations (RCO)

To His Excellency F. Korthals Altes,
Minister of Justice, Postbus 20301, 2500 EH The Hague

Ref. 13.629/SB/Kd 1 May 1985
Re: protection of mask works of semiconductor chips

Your Excellency, On 1 January 1985, the Semiconductor Chip Protection Act 1984 entered into force in the United States of America. This makes the USA the first country to have a special Act to provide legal protection for mask works of semiconductor chips. Pursuant to the Act, protection of mask works can only be extended to non-residents of the USA under certain conditions. This is intended to encourage other countries to take measures to provide equivalent protection for American chips. It is clear that the Act has significant consequences for those sections of Dutch industry which produce and use chips.

The RCO understands that your Ministry and the Ministry of Economic Affairs are currently studying the Act. For the record, we for our part would like to emphasize that we consider it most important that measures be taken to protect Dutch industry without delay. It would for example be possible to take advantage of the interim protection available under the US Act upon application to the Secretary of Commerce.

Under the Act it is also possible to lodge a petition for a Presidential Proclamation. Petitions can be granted only if the petitioning country possesses legislation which provides adequate protection to mask works of semiconductor chips, including those on which residents of the USA own the intellectual property rights. The Netherlands Copyright Act, *inter alia*, would appear to offer such protection.

We would ask you to take steps to ensure that the Netherlands submits an application for interim protection as soon as possible. A study of the applicability of the Netherlands Copyright Act should be made, to provide a basis for a petition for a Presidential Proclamation to be lodged in due course as a follow-up to the interim arrangements.

The US Act naturally has consequences not only for the Netherlands but for other EC Member States as well. We regard it as highly desirable that consultations should be held at European level in order to arrive at a uniform approach to the protection of mask works of semiconductor chips at the earliest possible moment.

We are sending a similar letter to the Minister for Economic Affairs.

Yours faithfully,

J.A. Dortland,

Secretary, Council of Central Entrepreneurial Organisations (RCO).

National Legislation

Netherlands

The Copyright Act, 1912

(as last amended by the Law of October 27, 1972)*

Chapter I

Section 1.—Nature of copyright

Article 1.—Copyright is the exclusive right of the author of a literary, scientific or artistic work, or of his assignees, to make such work public and to reproduce it, subject to the limitations provided in the Law.

Article 2.—Copyright shall be deemed personal property. It shall pass on by succession and shall be capable of transfer in whole or in part. Transfer of copyright in whole or in part may be effected only by an authenticated or private deed. The transfer shall comprise only those rights specifically mentioned in the deed of transfer or which are necessarily implied from the nature or purpose of the agreement.

The copyright belonging to the author of a work and, after his death, the copyright belonging to the person having acquired any unpublished work as heir or legatee of the author, shall not be subject to seizure.

Section 2.—Author of the work

Article 3.—[repealed]

Article 4.—In the absence of proof to the contrary, the person who is indicated as author in or on the work or, where there is no such indication, the person who, when the work is made public, is made known as the

* The basic Act is dated September 23, 1912. The Law of October 27, 1972, was published in the *Staatsblad*, 1972, No. 579.—WIPO translation.

author by the party who makes the work public, shall be deemed to be the author of the work.

If the author is not named, the person who delivers an oral address which has not appeared in print shall be deemed to be the author thereof, unless there is proof to the contrary.

Article 5.—If a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose guidance and supervision the work as a whole has been made or, if these is no such person, the compiler of the various component works, shall be deemed to be the author of the whole work, subject to the copyright in each of the separate works.

Where a separate work in which copyright subsists is incorporated in a whole work, the reproduction or making public of each separate work, by any person other than the author thereof or his successor in title, shall be deemed to be an infringement of the copyright in the whole work.

Where such a separate work has not been previously made public, the reproduction or making public of the separate work by the author thereof or his successors in title, without mention of the whole work of which it is a part, shall be regarded as an infringement of the copyright in the whole work, unless otherwise agreed between the parties.

Article 6.—If a work has been produced according to the plan and under the guidance and supervision of another person, that person shall be deemed to be the author of the work.

Article 7.—Where work performed in the service of another person consists in the production of certain literary, scientific or artistic works, the person in whose service they were produced shall be deemed to be the author thereof, unless otherwise agreed between the parties.

Article 8.—Any public institution, association, foundation or partnership which makes a work public as its own, without naming any natural person as the author thereof, shall be regarded as the author of the work, unless it is shown that making the work public in such manner was unlawful.

Article 9.—If a work appearing in print does not mention the name of the author or does not mention his true name, the person mentioned in such work as the publisher or, where there is no such indication, the person whose name appears as the printer thereof may, on behalf of the copyright owner, assert the copyright in the work against third parties.

Section 3.—Works protected by copyright

Article 10.—For the purposes of this Act, the term "literary, scientific or artistic works" shall include:

(i) books, pamphlets, newspapers, periodicals and all other writings;

(ii) dramatic and dramatico-musical works;

(iii) lectures;

(iv) choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise;

(v) musical works, with or without words;

(vi) drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like;

(vii) geographical maps;

(viii) plans, sketches and three-dimensional works relating to architecture, geography, topography or other sciences;

(ix) photographic and cinematographic works, and works produced by analogous processes;

(x) works of applied art and industrial designs,[1] and generally any production in the literary, scientific or artistic fields, whatever may be the mode or form of its expression.

Reproductions of adaptations of a literary, scientific or artistic work, such as translations, arrangements of music, cinematographic adaptations and other alterations, as well as collections of different works, shall be protected as separate works, without prejudice to the copyright in the original work.

Article 11.—No copyright shall subsist in laws, decrees or ordinances issued by public authorities, or in judicial or administrative decisions.

Section 4.—Publication

Article 12.—The publication of a literary, scientific or artistic work shall include:

(i) the publication of a reproduction of all or part of the work;

(ii) the distribution of all or part of a work or of a reproduction thereof, so long as such work has not appeared in print;

(iii) the public recitation, performance or presentation of all or part of a work or of a reproduction thereof.

A recitation, performance or presentation in a private circle shall be deemed to be a public recitation except where such circle is confined to relatives or friends, or to persons who may be assimilated to relatives or friends, and where no fee of any kind is charged for admission to the recitation, performance or presentation. This provision shall apply also to an exhibition.

A recitation, performance or presentation which serves exclusively a scientific purpose, or education dispensed in the name of the public authorities or of a non-profit-making legal entity, shall not be deemed to be a public recitation, performance or presentation, provided that it is incorporated in the study program.

Simultaneous publication, by wire or otherwise, of a work made public by way of radio or television broadcast shall not be deemed to be seperate publication where it is carried out by the organization making the broadcast.

Section 5.—Reproduction

Article 13.—The reproduction of a literary, scientific or artistic work shall include also translation, arrangement of music, cinematographic adaptation or dramatization, and generally any partial or total adaptation or imitation, in a modified form, which cannot be regarded as a new and original work.

Article 14.—The reproduction of a literary, scientific or artistic work shall be understood to mean also the recording of all or part of the work on an article intended for causing a work to be heard or seen.

Section 6.—Limitations on copyright

Article 15.—Unless the copyright is expressly reserved, the reprinting in a daily or weekly newspaper or weekly or other periodical, without the authorization of the author or his successor in title, of articles, reports or other contributions, with the exception of novels and short stories, having appeared in another daily or weekly newspaper or weekly or other periodical, shall not be deemed to be an infringement of copyright, provided that the name of the daily or weekly newspaper or weekly or other periodical from which they were reprinted is clearly stated, as well as the name of the author, if given. In the case of periodicals, it shall be sufficient to make a general reservation of copyright in the heading of each issue. No reservation of copyright may be made in respect of articles on current political topics, news of the day and miscellaneous information.

The right of reprinting referred to in the preceding paragraph shall apply to foreign newspapers and periodicals only with respect to news of the day, miscellaneous information and articles on current economic, political or religious topics, provided that the last sentence of the preceding paragraph shall not apply with respect to articles on current political topics.

The provisions of this Article shall apply also to reproductions in a language other than that of the original article.

Article 15a.—Short quotations of articles, even in the form of press summaries, appearing in a daily or weekly newspaper or weekly or other periodical shall not be deemed to be an infringement of copyright on conditions that the name of the daily or weekly newspaper or weekly or other periodical from which they are taken is clearly stated, as well as the name of the author of the passages quoted, if given.

Article 15b.—Subsequent publication or reproduction of a literary, scientific or artistic work made public by or on behalf of the public authorities shall b deemed to be an infringement of the copyright in such work, unless the copyright is expressly reserved, either in a general manner by a law, decree or administrative order, or in a specific case by a notice appearing on the work itself or a communication made at the time of its publication. Even if no such reservation has been made, the author retains the exclusive right to cause those of his works which have been published by or on behalf of the public authorities to appear in the form of a collection.

Article 16.—It shall not be deemed to be an infringement of the copyright in a literary, scientific or artistic work:

(*a*) to reproduce, in whole or in part, in the original language or in translation, works already published (*uitgegeven*) in anthologies and other works clearly intended for use in education or for other scientific purposes, provided that:

[1] Article Ia of the Law of October 27, 1972, contains the following provisions:

Article Ia.—Until the date of entry into force of the Benelux Uniform Law on Designs and Models, annexed to the Benelux Convention on Designs and Models, concluded at Brussels on October 25, 1966, the first paragraph of Article 10, undet (x), should read as follows:

(x) works of applied art;

(i) reproduction is confined to a small number of brief portions of the work, or to a small number of short essays or poems by the same author and, in the case of works referred to in Article 10, first pargraph, under (vi), to some of those works, and that the reproductions differ appreciably in size or process of manufacture that, where two or more such works have been made public together, the reproduction of only one of them shall be permitted;

(iii) the provisions of Article 25 are respected;

(iii) the reproductions mention the original work and the name of the author if it is indicated therein or thereon;

(iv) equitable remuneration is paid to the author or to his successors in title;

(*b*) to quote, in the original language or in translation, parts of writings already made public, to quote parts of musical works already made public, and to incorporate reproductions of works of plastic are already made public in the texts of announcements of criticisms, polemic writings or scientific treatises, provided that:

(i) the number and length of the parts quoted or reproductions incorporated do not go beyond what is reasonably acceptable to social custom;

(iii) the provisions of Article 25 are respected;

(iii) the name of the author is mentioned if it is indicated on or the original work.

The right [of the Queen] to determine by administrative regulation what shall be understood, in first paragraph, under (*a*)(i), by "a smalll number of brief portions of the work or a small number of short essays or poems by the same author", and to determine what shall be understood, in the first paragrph under (*a*)(iv), by "remuneration", reserved.

A summary of a lecture which has been delivered in public without having previously appeared in print may contain quotations of the said lecture in the original language or in translation, provided that the number and length of such quotations do not go beyond what is reasonably acceptable to social custom and that the name of the speaker is indicated; the provisions of Article 25 shall be complied with.[2]

*Article 16*a.—It shall not be deemed to be an infringement of the copyright in a literary, scientific or artistic work to make a short recording, reproduction or presentation thereof in public in a photographic film, radio or television report, provided that this necessary to give a proper account of the current events which are the subject of the report.

*Article 16*b.—It shall not be deemed to be infringement of the copyright in a literary, scientific or artistic work to reproduce it in a limited number of copies for the sole purpose of the personal practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself.

Where the work is one of those referred to in Article 10, first paragrpah, under (i) including the score or parts of a musical work, the reproduction shall furthermore be confined to a small portion of the work, except in the case of:

(*a*) works of which, in all probability, no new copies are made available to third parties for payment of any kind;

(*b*) short articles, news items or other texts which have appeared in a daily or weekly newspaper or weekly or other periodical.

Where the work is one of those referred to in Article 10, first paragraph under (vi), the copy must differ appreciably in size or process of manufcture from the original work.

The provisions of the first paragraph concerning reproduction made to order shall not apply to reproduction made by recording a work or a part thereof on an article intended for causing the work to be heard or seen.

In the case of reproduction permitted under this Article, the copies made may not be transmitted to third parties without the consent of the copyright owner, except where such transmittal is effected for the purposes of a judicial or administrative proceeding.

An administrative regulation [isued by the Queen] may provide that with respect to the reproduction of works referred to in Article 10, fist paragraph, under (i), the provisions of one or several of the foregoing paragraphs may be waived for the operation of the public service and for the performance of the tasks incumbent on public service institutions. Directions and precise conditions may be fixed to this end.

The foregoing provisions of this Article shall not apply to the imitation of an architectural work.[3]

Article 17.—Without prejudice to the provisions of the foregoing Article, it shall not be deemed to be an infringement of the copyright in the works referred to in Article 10, first paragraph, under (i), to reproduce, on behalf of an enterprise, organization or other establishment, articles, information or other separate texts which have appeared in a daily or weekly newspaper or weekly or other periodical, or small portions of books, pamphlets or other writings, provided that they are scientific works and that the number of copies made does not exceed that which the enterprise, organization or establishment may reasonably need for the purposes of its internal activities. Copies may only be transmitted to persons employed by the enterprise, organization or establishment.

Any person who makes copies or orders the making of copies shall pay equitable remuneration to the author of the work thus reproduced or to his successors in title.

An administrative regulation [issued by the Queen] may fix provisions concerning the maximum number of copies, the maximum size of copies, the amount of remuneration, the mode of payment of remuneration and the number of copies in respect of which no remuneration is payable.[3]

*Article 17*a.—Provisions may be enacted by administrative regulation, in the general interest, to govern the exercise by the author or his successors in title of the copyright in a literary, scientific or artistic work with respect to the publication of such a work by means of the radio or television broadcasting of signs, sounds or images, or the distribution on a broader scale, by wire or otherwise, of a work made public in such a manner. The said administrative regulation may state that such a work may be made public in such a manner or be distributed on a broader scale without the prior consent of the author or his successors in title. Those who are thus entitled to make a work public or to distribute it on a broader scale shall nevertheless be bound to respect the rights of the author referred to in Article 25 and pay the author or his successors in title equitable remuneration which, failing agreement and at the request of the most diligent party, shall be fixed by the Court, which may at the same time order the payment of security.

The provisions of the foregoing paragraph shall apply accordingly to the production and distribution of articles, with the exception of cinematographic reproductions, designed to render all or part of a musical work audible by mechanical means, where in connection with the same musical work such articles have already been produced and distributed either by or with the consent of the author or his successors in title.

*Article 17*b.—Unless otherwise agreed, the right to make a work public by broadcasting on radio or television shall not imply the right to record the work.

The radio or television broadcasting organization entitled to the publication referred to in the foregoing paragraph shall nevertheless be permitted to record the work intended for broadcasting, using its own facilities and solely for the purpose of its own radio and television broadcasts, provided that the recording of sounds or images is destroyed within 28 days from the date on which the first radio or television broadcasting of the work took place, and in any event within six months following the date of the recording. The organization thus entitled to make the recording shall nevertheless be bound to respect the rights of the author referred to in Article 25.

An administrative regulation may provide that recordings thus made which posses exceptional documentary value may be kept in official archives, and may further determine the conditions applicable in such a case.

*Article 17*c.—It shall not be deemed to be an infringement of the copyright in a literary or artistic work when such work is performed vocally by a religious community and is

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[2] Article II of the Law of October 27, 1972, contains the following provision:

Article II.—Article 10(*a*) shall not be applicable to anthologies and other works clearly intended for use in education or for other scientific purposes, and which are published unabridged in the same form as that in which they were published prior to the entry into force of this Law. Such anthologies and works shall remain subject to the law applicable prior to the entry into force of this Law.

[3] The second paragraph of Article IV of the Law of October 27, 1972, contains the following provision:

Articles 16 and 17 shall enter into force on a date which shall be determined by administrative regulation, but not later than July 1, 1974.

[3] The second paragraph of Article IV of the Law of October 27, 1972, contains the following provision:

Articles 16*b* and 17 shall enter into force on a date which shall be determined by administrative regulation, but not later than July 1, 1974.

provided with instrumental accompaniment in the course of a service.

Article 17d.—The administrative regulations referred to in Articles 16, second paragraph, 16*b*, sixth paragraph, 17, third paragraph, and 17*a*, first and second paragraphs, and the possible amendment of such regulations, as well as all decisions, directions or measures deriving therefrom shall not enter into force until two months have expired following the date of their publication in the *Staatsblad*.

Article 18.—It shall not be deemed to be an infringement of the copyright in a work referred to in Article 10, first paragraph, under (vi), which is permanently displayed in a public thoroughfare, to reproduce or publish a reproduction of such work, provided that the work does not constitute the main part of the reproduction, that the reproduction differs appreciably in size or process of manufacture from the original work and that, with regard to architectural works, only the exterior thereof is reproduced.[4]

Article 19.—The reproduction of a portrait by or on behalf of the person portrayed, or, after death, by or on behalf of his relatives, shall not be deemed to be an infringement of copyright.

If the portrait is of two or more persons, reproduction thereof by or on behalf of one of the persons portrayed shall not be lawful without the consent of the others or, during the ten years following their death, without the consent of their relatives.

It shall not be deemed to be infringement of copyright to reproduce a photographic portrait in a newspaper or periodical if the reproduction is made by one of the persons referred to in the first paragraph of this Article or with his consent, provided that the name of the photographer is indicated if it appears on the portrait.

This Article shall apply only to portraits which have been made pursuant to an order given to the author of the portrait by or on behalf of the persons portrayed.

Article 20.—Unless otherwise agreed, the owner of the copyright in a portrait shall not be entitled to make such portrait public without the consent of the person portrayed or during the ten years following his death without the consent of his relatives.

If the portrait is of two or more persons, reproduction thereof shall be lawful only with the consent of all the persons portrayed or, during the ten years following their death with the consent of their relatives.

The last paragraph of the preceding Article shall apply.

Article 21.—If a portrait is made without having been ordered by or on behalf of the person portrayed, the copyright owner shall be allowed to make it public only in so far as the person portrayed or, after his death, his relatives have no legitimate reason for opposing its being made public.

Article 22.—In the interest of public safety and for the purpose of judical inquiries, images of any nature may be reproduced publicly exhibited and distributed by, or by order of, the judicial authorities.

Article 23.—Unless otherwise agreed, the owners of a drawing or painting, a work of architecture, a sculpture or a work of applied art shall be entitled, without the consent of the copyright owner, to exhibit such work publicly or to reproduce it in a catalog for the purpose of sale.

Article 24.—Unless otherwise agreed, the author of a painting shall, notwithstanding the transfer of his copyright, be entitled to make further similar paintings.

Article 25.—Even after transfer of his copyright, the author of a work shall have the following rights:

(*a*) the right to object to publication of the work under a name other then his own, as well as any alteration of the name of the work or the indication of the author, if such name or indication appears on or in the the work or has been made public in conjunction with the work;

(*b*) the right to object to any other modification of the work, except where the nature of the modification is such that it would be unreasonable to object to it;

(*c*) the right to object to any distortion, mutilation or other modification of the work which would be prejudicial to the honor or reputation of the author or to his value as such.

The rights referred to under (*a*), (*b*) and (*c*) above shall accrue, after the death of the author and until the copyright expires, to the person whom the author shall have appointed by will or codicil.

The rights referred to under (*a*) and (*b*) above may be transferred when modifications are to be made to the work or to its name.

If the author of the work has transferred his copyright, he shall retain the right to make such modifications to the work as he may make in good faith in accordance with the rules established by social custom. As long as copyright subsists, the same right shall belong to the person whom the author has appointed by will or codicil, if it may reasonably be supposed that the author would have approved such modifications.

Article 25a.—For the purposes of this Section, "relatives "means the father and mother, spouse and children. Each of the relatives may exercise individually the rights accruing to him or her. In the event of dispute, the Court may render a decision which shall be binding on each of the parties.

Chapter II

Enforcement of Copyright and Criminal Provisions

Article 26.—Where the copyright and in a work belongs jointly to two or more persons, it may be enforced by any one of them, unless otherwise agreed.

Article 27.—Notwithstanding the transfer of his copyright in whole or in part, the author shall retain the right to institute an action for damages against infringers.

After the death of the author, the right to institute actions for damage as provided for in the first paragraph shall accrue to his heirs or legatees until the copyright expires.

Article 28.—Copyright shall confer the power to seize personal property, objects made public in infringement of that copyright and unlawful reproductions, in accordance with the provisions governing seizure under a prior claim, and either to claim ownership of them or to demand that they be destroyed or rendered unusable. The same powers of seizure and claim shall exist with respect to the entrance fees paid for admission to a recital, performance, exhibition or presentation which constitutes an infringement of copyright.

Where the surrender of the objects referred to in the first paragraph is demanded, the Court may order that such surrender be made only in return for compensation to be paid by the claimant.

The two foregoing paragraphs shall apply exclusively to personal property and to property which, by reason of its use, is regarded as real property.

With respect to real property other than that referred to in the preceding paragraph which is liable to be the subject of an infringement of copyright, the Court may, at the request of the owner of the right, order that the defendant introduce such changes as will remove the infringment of the copyright, and may order the defendant to pay a certain sum of money as compensation if, within a specified time, the Court order is not complied with.

These provisions shall not prejudice any right to institute criminal proceedings for infringement of copyright and civil proceedings for damages.

Article 29.—The right provided for in the first paragraph of the preceding Article shall not be exercised in respect of objects in the possession of persons who do not deal in similar objects and who have acquired them exclusively for their own use, unless they have themselves infringed the copyright.

A request under the fourth paragraph of the preceding Article may be made against the owner or possessor of real estate only when he is responsible for the infringement of copyright concerned.

Article 30.—If any person makes a portrait public without being entitled to do so, the provisions of Articles 28 and 29 on copyright shall be applicable with respect to the right of the person portrayed.

Article 30a.—The exercise, with or without gainful intent, of the profession of intermediary in matters of copyright in musical works, shall be subject to the permission of the Minister of Justice.

The following shall be deemed to be acts of an intermediary in matters of copyright in musical works: the conclusion or implementation, whether or not in the name of the intermediary, and on behalf of the authors of musical works or their successors

[4] Article III of the Law of October 27, 1972, contains the following provisions:

Article III.—The present version of Article 18 shall not be applicable to reproductions appearing in books or printed matter which are published unabridged in the same form as that in which they were published prior to the entry into force of this Law. Such books and printed matter shall remain subject, as far as reproductions are concerned, to Article 18 as worded prior to the entry into force of this Law.

Reproductions to which the first paragraph is not applicable and which, prior to the entry into force of this Law, were made under Article 18 without infringing any copyright, as well as unchanged copies of such reproductions, may be distributed during the five years following the entry into force of this Law.

in title, of agreements concerning the public performance or the broadcasting on radio or television by signs, sounds or images of such works or reproductions thereof, in whole or in part.

The performance or radio or television broadcasting of dramatico-musicals works, choreographic works and entertainments in dumb show, and reproductions thereof, if such works are rendered audible without being shown, shall be assimilated to the performance and radio or television broadcasting of musical works.

Any agreement as referred to in the second paragraph which is entered into without the ministerial permission required under the first paragraph shall be null and void.

Further provisions shall be made by administrative regulation, concerning among other things the supervision of the person having obtained the permission of the Minister of Justice. The cost of supervision may be charged to that person.

The supervision referred to in the foregoing paragraph may only concern the way in which the intermediary carries out the duties assigned to him. Interested parties shall participate in the supervision.

Article 31.—Any person who intentionally infringes another's copyright shall be punishable by imprisonment not exceeding six months or by a fine not exceeding 25,000 guilders.

Article 32.—Any person who, knowing that a work constitutes an infringement of copyright, distributes it or publicly offers it for sale shall be punishable by a fine not exceeding 10,000 guilders.

Article 33.—The infringements referred to in Articles 31 and 32 shall be misdemeanors.

Article 34.—Any person who intentionally and unlawfully makes changes in a literary, scientific or artistic work protected by copyright, or in the title or the indication of the author of such work, or who performs another act derogatory to a work in a manner prejudicial to the honor or reputation of the author or his value as such, shall be punishable by imprisonment not exceeding six months or by a fine not exceeding 25,000 guilders.

Such act shall be a misdemeanor.

Article 35.—Any person who, without being authorized to do so, publicly exhibits a portrait or makes it public in any other manner shall be punishable by a fine not exceeding 10,000 guilders.

Such act shall be a minor offense.

Article 35a.—Any person who, without having obtained the required permission of the Minister of Justice, performs acts attributable to the exercise of the profession of intermediary as defined in Article 30a shall be punishable by a fine not exceeding 5,000 guilders.

Such act shall be a minor offense.

Article 35b.—Any person who deliberately supplies inaccurate or incomplete information in a written request or statement on the basis of which amounts due as royalties are determined, by the action of person who, with the permission of the Minister of Justice, intervenes in matters of royalties payable on musical works, shall be punishable by imprisonment not exceeding three months or by a fine not exceeding 1,000 guilders.

Such act shall be a minor offense.

Article 36.—Reproductions confiscated by virtue of a decision of the Criminal Court shall be destroyed; however, the Court may order in its decision that they be surrendered to the copyright owner if the latter applies to the Office of the Clerk of the Court within one month from the date on which the decision becomes final.

Upon such surrender, ownership of the copies shall pass to the copyright owner. The Court may order that such surrender take place only on payment by the copyright owner of compensation, which compensation shall accrue to the State.

Article 36a.—If an infringement is committed by a legal entity, society, association or foundation, or on its behalf, criminal action shall be instituted against, and sentences and other measures imposed on:

(i) either the legal entity, society, association or foundation in question,

(ii) or those who gave the order to perform the unlawful act or omission concerned or are directly responsible for it,

(iii) or against both.

An infringement is deemed to have been committed by a legal entity, society, association or foundation, or on its behalf, if it is committed by persons who, either by virtue of their duties or for another reason, act on behalf of the legal entity, society, association or foundation, irrespective of whether those persons have committed the infringement individually or whether their action was concomitant with the perpetration of the infringement.

Where criminal proceedings are brought against a legal entity, society, association or foundation, the latter shall be represented at the proceedings by its director or one of its directors. The director may be represented by an agent. The Court may order the personal appearance before it of a particular director, in which case it may order that he be summoned.

Where criminal proceedings are brought against a legal entity, society, association or foundation, Article 538(ii) of the Code of Criminal Procedure shall be applicable accordingly.

Article 36b.—Investigators shall have the right of access to any place for the investigation of facts associated with infringements in terms of this Act and for the seizure of objects which are liable to be associated with such infringement.

If access is denied them, they may gain entry, if necessary, with the assistance of the police.

They shall not enter a dwelling against the will of the occupier unless they present a special warrant or are accompanied by the Royal Prosecutor or the deputy of the Royal Prosecutor. They shall report on such entry within twenty-four hours.

Chapter III

Duration of Copyright

Article 37.—Copyright shall terminate on the expiration of a term of fifty years from the first of January of the year following the year of the death of the author.

The duration of the copyright belonging jointly to two or more persons in their capacity as co-authors of a work shall be counted from the first of January of the year following the year of the death of the last surviving co-author.

Article 38.—The copyright in a work with respect to which the author has not been indicated, or has not been indicated in such a way that his identity is beyond doubt, shall terminate on the expiration of a term of fifty years from the first of January of the year following that in the course of which the work was first made public by or on behalf of the copyright owner.

This provision shall be applicable also to a work of which a public institution, an association, a foundation or a partnership is deemed to be the author, and to a work published for the first time after the death of the author.

If the author discloses his identity prior to the end of the term mentioned in the first paragraph, the duration of the copyright in the respective work shall be calculated in accordance with the provisions of Article 37.

Article 39.—[repealed]

Article 40.—[repealed]

Article 41.—For the purposes of Article 38, a work which has appeared in instalments or episodes shall be deemed to have been made public only on the issue of the last instalment or episode.

In the case of a work consisting of two or more volumes, numbers or sheets, or which has appeared in print on different dates, and in the case of reports or communications published by associations or private persons, each volume, number, sheet, report or communication shall be deemed to be a separate work.

Article 42.—Notwithstanding the provisions of this Chapter, no claim may be made in the Netherlands to a copyright which has already terminated in the country of origin of the work.

Chapter IV

(Articles 43 and 44)

(contains modifications of the Bankruptcy Act and the Criminal Code)

Chapter V

(Article 45)

[repealed]

Chapter VI

Transitional and Final Provisions

Article 46.—With the entry into force of this Act, the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), shall be repealed.

However, Article 11 of the aforementioned Act shall remain in force in respect of works and translations deposited prior to the said date.

Article 47.—This Act shall apply to all literary, scientific or artistic works published for the first time in the Netherlands either before or after its entry into force, by or on behalf of the author, or published in the Netherlands during the thirty days following first publication in another country, as well as to all such works not published, or not published under the same conditions, of which the authors are Dutch citizens.

A work shall be deemed to have been published within the meaning of this Article when it has appeared in print or, in general, when copies of the work, irrespective of their nature, have been made available to the public in sufficient quantity.

The performance of a dramatic, dramatico-musical or musical work, the presentation of a cinemotographic work, the recitation or radio or television broadcasting of a work and the exhibition of a work of art shall not constitute publication *(uitgave)*.

With regard to architectual works and works of plastic art constituting an integral part thereof, the construction of the architectural work or the incorporation of the work of plastic art shall constitute publication.

*Article 47*a.—This Act shall remain applicable to all literary, scientific or artistic works published for the first time by or on behalf of the author prior to December 27, 1949, in the Dutch East Indies or prior to October 1, 1962, in Dutch New Guinea.

Article 48.—This Act does not recognize copyright in works in which, at the time of its entry into force, copyright has expired under Article 13 or 14 of the Copyright Law of June 28, 1881 (*Staatsblad* No. 124), or in works in respect of which, on the said date, the right of reproduction has expired under Article 3 of the Law of January 25, 1817 (*Staatsblad* No. 5), relating to the rights exercisable in the Netherlands in respect of the printing and publication of literary and artistic works.

Article 49. Copyright obtained under the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), and also the right to copy or any right of this nature obtained under earlier legislation and maintained by the said Act, shall continue after the entry into force of this Act.

Article 50.—[repealed]

*Article 50*a.—[repealed]

*Article 50*b.—The exclusive right of the composer of a musical work to manufacture instruments intended to render all or part of the work audible by a mechanical process, and the right of public preformance of such work by means of similar instruments, shall not be applicable to all or part of a musical work which was adapted for sound reproduction by mechanical means prior to November 1, 1912, in the Realm in Europe or in the Dutch East Indies.

Instruments as referred to in the foregoing paragraph which have been manufactured in one of the States of the International Union for the Protection of Literary and Artistic Works without the consent of the composer of the musical work, but without violating a legal provision currently in force in that State may be distributed, sold and used for public performances in the Netherlands.

Article 50c—Any person who, prior to September 1, 1912, without violating the provisions of the Copyright Act of June 28, 1881 (*Staatsblad* No. 124), or of any treaty in force in the Netherlands or in the Dutch East Indies, has published copies of a literary, scientific or artistic work, which do not constitute a reprinting of all or part of such a work as referred to in Article 10, under (i), (ii), (v) or (vii), shall not, as a result of the entry into force of this Act, lose the right to distribute and sell such copies made before or after that date. This right may be transferred in whole or in part by inheritance or assignment. The second paragraph of Article 47 shall apply accordingly.

The Court may, on written petition by the owner of the copyright in the original work, either revoke the right provided for in the first paragraph, in whole or in part, or award the petitioner an indemnity for the exercise of the said right, and in either case the provisions of the following two Articles shall apply.

*Article 50*d.—The petition for total or partial revocation of the right set forth in Article 50c may only be made if a new edition of copies has been made since November 1, 1915. The second paragraph of Article 47 shall apply accordingly.

The petition shall be filed with the Court of Amsterdam before the end of the calendar year following that in the course of which publication took place. The Clerk of the Court shall summon the parties at an appropriate date to be specified by the Court. The case shall be heard in the Council Chamber.

The Court shall accede to the petition for revocation of the right only if and to the extent that it finds that the moral rights of the petitioner are injured by the distribution and sale of the copies. If the petition is not filed by the author of the original work, the Court shall refuse it if there is good reason to believe that the author has consented to the publication of the copies. The Court shall also refuse the petition where the petitioner has made an effort to obtain an indemnity from the persons who exercise the right. It may refuse the petition if revocation of the right would unduly prejudice the interests of the persons exercising the right as compared with the interests of the petitioner which have to be safeguarded. If the Court revokes the right in whole or in part, it shall set the date on which such revocation shall take effect.

In arriving at a decision, the Court shall make such provisions as it deems just in consideration of the interests of both parties and other interested persons. It shall assess the costs incurred by both parties and shall determine what portion thereof is to be paid by each. No appeal from judicial decisions rendered pursuant to this Article shall be admissible. No court clerk's fees shall be charged for proceedings under this Article.

*Article 50*e.—An indemnity may be awarded for the exercise of the right set forth in Article 50*c* only where a new edition of copies has been published since May 1, 1915. The second paragraph of Article 47 shall apply accordingly.

The second and fourth paragraphs of the preceding Article shall apply.

*Article 50*f.—[repealed]

Article 51.—[repealed]

Article 52.—This Act may be cited as "The Copyright Act, 1912".

Article 53.—This Act shall enter into force in the Realm in Europe on the first day of the month following that in which it is promulgated.

Correspondence

Letter From the Netherlands

By S. GERBRANDY*

Important amendments were made recently to the 1912 Copyright Act, which in substance continues to govern this subject.

While referring the reader to our 1965 "Letter",[1] we shall give a brief summary here of the system underlying the Act.

I. Prerogatives of the author

Under Netherlands law the author has only two prerogatives: the right of publication and the right of reproduction. We should give a concise explanation of these two concepts.

1. Publication

The 1912 legislator assumed a "natural meaning" of this concept, which in his view corresponded more or less (but not fully) to the concept of publishing, that is, of placing material copies of the work at the disposal of the public. He did not see fit to define this first meaning in the Act.

The other meanings which the publication concept can have are, on the other hand, defined in the Act: public recitation, performance or presentation of the work. The legislator was careful to choose his words well, in such a way that the performance, etc., of an adapation (cinematographic or other) is equivalent to the performance of the work itself.

A distinction should therefore be made between publication

(a) by means of the distribution of copies (books, records, photographs, etc.),

(b) by any other means.

2. Reproduction

Here too, the legislator assumed a "primary meaning" of this concept, that is, the act of making one or more copies of the work (one copy = the photograph of a sculpture or painting; several copies = the printing of the manuscript of a book, or the recording on a disc of a vocal composition).

This is followed by the other meanings (these being specified non-exhaustively in the Act): translation, musical, cinematographic or dramatic adaptation, etc.

(a) material reproduction (manufacture of one or more copies),

(b) immaterial reporduction (translation, adaptation and imitations of all kinds).

3. Reconciliation of the Two Concepts

Under the Netherlands system, therefore, the publishing of a book take place in two stages: *(a)* reproduction: the individual copies of books are printed on the basis of a manuscript; *(b)* publication : the books thus completed are put on sale. It follows that a Dutch national who assigns his "right of reproduction" (for instance, in the sense given to it by his national legislation: the right to make records) does not by the same token assign his right to put the copies on sale (right of publication in the sense attributed to it in the Netherlands). The foreign assignee publisher who enters into a contract to which

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* Counsellor at the Amsterdam Court of Appeal.

[1] *Copyright*, 1965, p. 41.

Netherlands law is applicable should therefore, in addition, have part of the right of publication assigned to him separately. Misunderstandings in this respect are bound to appear when Franco-Dutch proceedings are brought before Dutch courts.

II. Publication—Amendments Made to the Publication Concept (Article 12)

1. Broadening of the Concept of Public Performance

There is an intermediate area between the "private circle" or "closed circle" and the general public. The 1972 legislator has narrowed this area to the advantage of the public performance concept. From now on, the "closed circle" will be considered public whenever it is not a circle consisting of family, friends or any other persons who may be assimilated to family or friends. The last phrase is the result of retouching by Parliament, and in our opinion it obscures the meaning of the paragraph. The original Bill specified "circle consisting of family, friends or acquaintances". The preparatory work on the 1972 Law leaves no room for doubt that the purpose of the amendment was to limit this privileged circle as must as possible.

2. School; education

The recitation of poems and the reading of prose in class have always been regarded as permitted. The legislator has now expressly provided that recitation, performance and presentation for the benefit of education is free, on condition that it is incorporated in the study program of the establishment concerned.

This provision has not escaped criticism. It is accepted that the professor in charge of the class should be allowed to recite contemporary poems. But what of performances involving the use of videograms and other costly apparatus? Our compatriot, Franca Klaver, among others, pointed to the dangers of too extensive freedom in an exhaustive study.[2] Fully aware of these criticisms, the legislastor considered that the current state of technology made it impossible to establish a rule at the present time on a subject still in the process of development.

3. Public Communication of a Broadcast Work

The "publication"—including broadcasting and communication by wire—of a broadcast work will not be permitted without the consent of the author unless two conditions are met:

(a) the "publication" must be simultaneous.

(b) the "publication" must be made by the same organization as the one which made the first broadcast.

Condition *(a)* is clear: the repetition of a broadcast (for instance, at 8 p.m. in the Netherlands and at midnight in Surinam) requires the consent of the author, even if the entity or organization which undertakes the second broadcasting is completely identical with the one which made the first.

Condition *(b)* calls for some explanation, however. By "organization", Netherlands law means *something different from "broadcasting organization"* in terms of Article 11[bis] of the Berne Convention. This is why, in the above paragraphs, we have spoken of "making" or "undertaking" broadcasting. What is meant is all the associations, firms and services which take care of the cultural, legal and technical aspects of broadcasting. In the Netherlands, these include at least: (i) one of our broadcasting organizations in terms of Article 11[bis] of the Berne Convention; (ii) the post, telephone and telegraph service, which provides very considerable technical assistance; and (iii) NOZEMA, the corporation which operates the transmitters.

The meaning of the provision is this: there has been a new act of "publication" not only if a third party communicates the broadcast work to the public—either by wire or by wireless—but also if one of the bodies mentioned under (i) to (iii) in the preceding paragraph does so alone.

This can indeed happen. The post, telephone and telegraph service operates radio transmitting networks and central television antenna systems. This constitutes a new act of "publication", even if it occurs at the same time as the technical contribution of the service to the original broadcast.[3]

III. Reproduction

1. Amendments Made to the Reproduction Concept (Articles 13 and 14)

No radical changes have been made here.

In Article 13, cinematographic adaptation is expressly mentioned as an example of reproduction. Article 14 has been made clearer: it has been modernized in such a way as to cover not only discs and sound tape recordings but also videograms and other similar apparatus.

2. The Right of Borrowing and the Right of Quotation

The old Article 16 was badly drafted and regulated these rights in a rather unsystematic way. The new drafting makes a clear-cut distinction and lays down quite elaborate rules for each of the two rights. It is not necessary to go into the details here.

3. The problems of Tapes and Photocopies (Articles 16b and 17)

This is an ultramodern problem which has caused concern to a great number of legislators. The preparation of the amendments was long and hard, and it was accompanied by what on paper were bitter quarrels between the parties concerned. For the moment, it seems that an acceptable solution has been found. The subject-matter is difficult, and some explanation is therefore necessary.

4. Main features: the three categories

First category: reproduction [4] confined to a few copies and intended solely for the personal practice, study or use of the person who makes the copies or orders the copies to be made exclusively for himself.

This category was already to be found in the old text, except for the person who "orders the copies to be made".

Second category: the reproduction of books, pamphlets, documents, etc., in the performance of duties within the public service or for the fulfillment of the tasks incumbent on public service institutions.

This category was created by the new Law. The rules written into Articles 16*b* and 17 are indeed rather harsh, and it seemed necessary to allow a degree of freedom, especially for institutions like the Patent Council, public libraries, etc.

Third category: reproduction of books, pamphlets, articles, etc., for the use of enterprises and similar institutions.

This is another newly-created category. There can be no doubt that, for industry in particular, the freedom to make photocopies has a very definite importance.

5. The rules in Articles 16b and 17

A special system has been introduced for each of the above categories.

First Category: Private Use

(i) Reproduction for private use, as defined above, is in principle free.

(ii) In the case of writings (books, pamphlets, articles, etc.), or sheet music, however, reproduction must be confined to "small portions" of the work, except for works which are out of print or short articles in periodicals.

(iii) The exemption for "ordered" works does not apply to sound or video tapes.

Second Category: Public Service and Public Service Institutions.

The Law itself contains no special rule in this respect but refers to an administrative regulation. This regulation does not yet exist.

Third Category: Enterprises

(i) Subject to the reservations specified under (iii) and (iv) the reproduction of articles appearing in newspapers or periodicals is free.

(ii) Subject to the same reservations, the reproduction of "small portions of books, pamphlets or other writings" is permitted. The reservations are the following:

(iii) *(a)* The articles or writings must be "scientific", and *(b)* the number of copies must not exceed what the enterprise may reasonably need.

(iv) The person who makes the copies or orders the making of the copies must pay equitable remuneration to the author or to his successors in title.

These then are the rules—summarized to an extreme—for the three categories referred to above. The summary would not be complete, however, if we did not mention *one rule which is common to the first and third*

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[2] "Video: A general survey", in *Copyright*, 1972, p. 89.

[3] A distinction should be made between "central antennas" and "collective antennas". The latter is only a technical installation designed to improve reception, whereas the former brings to a certain public broadcast which otherwise would not reach their receivers. See also Franca Klaver, "Current Developments in Wire Television", in *Copyright*, 1969, p. 56.

[4] From here on, the word "reproduction" means alternatively the act of reproducing or the copy produced. It is the same in the Act.

categories, and a highly important rule at that. Once the copies have been lawfully made, they must remain in the possession of the person who made them or ordered them. For instance, I would photocopy or cause to be photocopied all the articles on copyright appearing in the magazine *Gewerblicher Rechtsschutz und Urheberrecht*, without actually subscribing to it, thereby building up a rich specialized library. However, this library must on no account come into the possession of another person. The same would apply to tape recordings which I made for my own private use. Similarly, the enterprise possessing lawfully-made photocopies of scientific articles may only give these to "persons employed by" it, which for practical purposes means to persons who have an immediate need for them in connection with scientific research carried on as part of their duties within the enterprise.

c. Administrative law. International law. Entry into force

The set of rules is not yet complete. The Queen has yet to determine, by administrative regulation, the position of the public service and of public libraries (second category). Moreover, the legislative provisions on libraries still have to be completed by administrative provisions. This is why the entry into force of Article 16*b* and 17 is postponed to July 1, 1974, at the latest.

This is not only reason, however. In accordance with the national treatment principle common to the two main international Conventions, the rules outlined above will also produce their effects at the international level: publishers who are nationals of one of the countries of the Berne Convention or of the Universal Convention will be entitled to "equitable remuneration" for copies made under the legal license granted to Dutch enterprises. How can this remuneration be collected? Obviously, we are also in need of a specialized body to undertake the collection and distribution of the sums owed by industry. Foreign publishers interested in this question would perhaps do well to contact the Royal Association of Netherlands Publishers (*KNUB—Koninklijke Nederlandse Uitgeversbond*, Herengracht 209, Amsterdam).

IV. Moral rights

For the first time since 1912, the legislator has devoted an entire article (Article 25) to moral rights. Until now the moral rights accorded to authors consisted of a few prerogatives in various places in the Act, but a systematic regulation of the question was lacking.

We shall not go into the details of the new provisions, which are to be found in Article 25 of the Law published above.

The Berne Convention (Brussels text) lays stress on the *right to claim authorship of the work*.

Our new Act seems, on the one hand, to afford more extensive protection and, on the other, to grant fewer rights.

The Act affords protection (Articel 25*(a)*) not only against publication of the work under a name other than that of the author (and other comparable infringements), but also under a title other than that chosen by the author.

On the other hand, the Netherlands legislator has not expressly conferred the right to demand that the name of the author be mentioned on copies of the work. A few years ago, this right was at issue in a dispute which aroused quite considerable interest (President of the Court of The Hague, January 25, 1965, *Nederlandse Jurisprudentie* 1965, 76; *Ars Aequi* XIV, 186, with note by Hirsch-Ballin; summary proceeding). The author of two chapters—out of eleven—of a book on economic history claimed the right to be mentioned as co-author on copies of the book, and his claim was dismissed. Are we then to assume that this decision has been sanctioned in the new text of the Act? It is hardly likely. For a start, the criticism by Professor Hirsch-Ballin, in the note referred to above, was so severe that a judge would need courage to render the same decision when another case came up. Moreover, the preparatory work on the new Article 25 provides no support for the argument that the legislator had deliberately sought not to grant the right in question.

For the same reason we do not believe that the level of protection in the Netherlands is lower than that of the Berne Convention. Professor Ulmer wrote: "Development has not finished. It is not possible at present to make an exhaustive enumeration of the prerogatives included among moral rights" (*Urheber-und Verlagsrect*, pp. 259 and 260). If, now, the Netherlands legislator recognizes the right of authorship in unambiguous terms, he is presumed to have accepted this right in its entirety, even if he has not specified all the prerogatives which such a right might embody.

Provision is then made (under *(b)*) for the right to object to any *modification* of the work. It is not required that the modification be "prejudicial to the honor or reputation of the author". There is restriction, however, in the provision according to which this right of the author may not be exercised when it would be unreasonable to object to the modification concerned. For a practical case, we refer the reader to *Copyright*, 1972, pp. 77 and 78.

This is followed by *(c)*, which deals with the protection against "any distortion, mutilation or other modification of the work which would be prejudicial to the honor or reputation of the author [this being based on Article 6bis of the Berne Convention] or to his value as such".

As far as *moral rights after the death of the author* are concerned, the system is not entirely satisfactory. In principle, moral rights subsist as long as pecuniary rights, yet the exercise of moral rights after the death of the author belong only to the person appointed by will. In the absence of a will, therefore, it is impossible to exercise the moral rights of the author after his death. This somewhat unfelicitous provision was introduced as a result of an amendment in the course of the debates in Parliament. The reason behind it is that, if the author has not taken the trouble to provide for his moral rights *post mortem*, it is not for the legislator to do so for him. The Chamber of Deputies seems to have overlooked the fact that sudden death can take the author by surprise, and that a work which seems of little importance during his lifetime can, after his death, acquire considerable value.

One more word on the English translation of this Article. It is provided that:

"The rights referred to under (*a*) and (*b*) above may be transferred when modifications are to be made to the work or to its name."

It should not be deduced from this that moral rights or parts thereof are transferable. This is not so. The original text uses the expression "*afstand doen van . . .*", which means "renounce". To give an example, the author of a novel who consents to the cinematographic adaptation of that novel may, by contract, undertake not to oppose the *modifications* which the authors of the cinematographic work might see fit to make in the dialogue or in the sequence of events embodied in the pre-existing work. On the other hand, the author's right to object to *distortion, mutilation*, etc., is reserved by a legislative provision which does not permit any derogation by contract.

V. International law

The Netherlands Copyright Act is applicable, according to its Article 47, "to all literary, scientific or artistic works published for the first time in the Netherlands".

This provision is not new. What is new is the definition of the concept of publication:

"A work shall be deemed to have been published within the meaning of this Article when it has appeared in print or, in general, when copies of the work, irrespective of their nature, have been made available to the public in sufficient quantity."

At first sight, this definition seems innocent enough. Yet the preparatory work on this amended text shows that the legislator wanted to deny protection under Netherlands law to the original text of a work published for the first time in translation in the Netherlands. We consider this an unhappy amendment. Moreover, it could be wondered whether the phrase quoted above is clear enough to rule out an interpretation which is quite the opposite of the legislator's intention.

VI. Prospects

The 1948 Brussels text of the Bruce Convention has been ratified by the Netherlands, which means that, in spite of the substantial advances we have made, we are still 25 years behind the times. We are aware of this, and the Minister of Justice has already taken steps to bring about the amendments in our domestic legislation which would enable us to accede to the Stockholm-Paris text.

This gives rise to a considerable number of questions. For instance, should a special régime for cinematographic works be introduced before accession is possible to the Berne Convention as revised at Stockholm (Articles 14 and 14bis)? For one thing, these Articles are applicable only in international situations, leaving national legislators completely free, and for another, the Articles appear to presuppose that countries of the Union determine in one way or another the status of cinematographic works. Our Law has never yet contained any express rules on

this. Points of law relating to cinematographic works have been resolved—and very satisfactorily too—by court decisions rendered on the basis of general legal principles. Is this sufficient for a country which wishes to accept Articles 14 and 14bis of the Berne Convention? And this is only one question among many.

The introduction of a completely new copyright legislation is generally a long drawn-out operation: in the Federal Republic of Germany, the *Referentenentwürfe* date back to 1954, but the new Act came out only in 1965. In France, the preparation of the 1957 Act began in 1944. Will the way to accession by the Netherlands to the most recent text of the Berne Convention lead over the mountain of a large-scale revision of domestic legislation? Or will the Netherlands legislator content himself for the moment with partial revisions? The choice has yet to be made.

[FR Doc. 85-14130 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 14, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On March 22, 1985 a notice was published in the **Federal Register** (50 FR 11533), which established an import restraint limit for women's, girls' and infants' trousers, slacks, and shorts in Category 648, produced or manufactured in Indonesia and exported during the ninety-day period which began on February 28, 1985 and extended through June 30, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for Category 648 during consultations, to limit its exports during the period which began on February 28, 1985 and extends through the end of the agreement year, June 30, 1985, to 361,844 dozen.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the prorated limit.

The United States Government has decided, inasmuch as no solution has been agreed concerning this category, to control imports at the designated limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textitle categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 14, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648, produced or manufactured in Indonesia and exported during the period which began on February 28, 1985 and extends through June 30, 1985, in excess of 361,844 dozen.[1]

Textile products in Category 648 which have been exported to the United States during the previously established ninety-day period which began on February 28, 1985 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 29754), November 9, 1984 (49 FR 44782).

[1] The limit has not been adjusted to reflect any imports exported after February 27, 1985.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-14251 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Malaysia

June 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 14, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On December 3, 1984, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 29, 1984, requested the Government of Malaysia to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in Malaysia. While agreement has been reached, diplomatic notes have not been exchanged. The Government of the United States has decided, therefore, to control imports in this category at the prorated level of 5,392,870 square yards, provided under the consultation mechanism of the bilateral agreement for goods exported during the six-month period which began on December 31, 1984 and extends through June 30, 1985. Should the notes be exchanged between the Governments of the United States and Malaysia, further notice will be published in the **Federal Register**. The level has not been adjusted to reflect any imports exported during the period which began on December 31, 1984.

Such imports during the January-March period of 1985 have amounted to 444,024 square yards and will be charged. As the data become available further charges will be made to account for the period which began on April 1,

1985 and extends through the effective date of this action, as well as thereafter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984, (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1985

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 2, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 14, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 313 produced or manufactured in Malaysia and exported during the six-month period which began on December 31, 1984 and extended through June 30, 1985 in excess of 5,392,870 square yards.[1]

Textile products in Category 313 which have been exported to the United States prior to December 31, 1984 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-14250 Filed 6-12-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after December 30, 1984. Imports during the January-March 1985 period have amounted to 444,024 square yards.

Request for Public Comment on Bilateral Textile Consultations With Government of Malaysia To Review Trade in Category 613pt. (Polyester/Cotton Lightweight Fabric)

June 7, 1985.

On May 29, 1985, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 613pt. (currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059). This request was made on the basis of the agreement, as amended, between the Governments of the United States and Malaysia relating to trade in Cotton, Wool and Man-Made Fiber Textitles and Textile Products of December 5, 1980 and February 27, 1981. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consulations between the two governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 613pt., produced or manufactured in Malaysia and exported to the United States during the period which began on May 29, 1985 and extends through June 30, 1985.

The Government of the United States had decided, pending agreement on a mutually satisfactory solution concerning this category, to control imports during the prorated sixty-day consultation period (May 29, 1985 through June 30, 1985) at a level of 1,323,313 square yards. In the event the limit established for the prorated consultation period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 613pt. under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Commets or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 613 Pt.—Polyester/Cotton Lightweight Fabrics [1]

May 1985.

Summary and Conclusions

U.S. imports of Category 613Pt.—lightweight polyester/cotton fabrics—from Malaysia doubled during the year-ending March 1985 period to 8.9 million square yards. This increase accrued after Malaysia's

[1] Until March 31, 1985, U.S. imports of these fabrics entered under TSUSA Nos. 338.5035, 338.5036, 338.5039 and 338.5041. From April 1, 1985, fabrics under this category have entered under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059. The TSUSA number assignments have been changed in order to bring the United States system into accordance with the Harmonized Code. Both the system in effect prior to April 1, and the new system cover all imports of polyester/cotton gray to printed plain weave fabrics weighing not over 5 ounces pet square yard. Imports of these fabrics directly impact the market for U.S. produced printcloth, batistes, broadcloths, yarn-dyed fabrics, and other lightweight, polyester/cotton fabrics which are produced for sale before finishing.

imports tripled in calendar year 1984. This is a sharp and substantial increase in imports into a sector already adversely affected by imports.

Approximately 86 percent of Malaysia's imports of these lightweight fabrics were entered under TSUSA No. 338.5035, polyester/cotton gray fabrics. Malaysia was the third largest supplier of this TSUSA number, accounting for 15 percent of the total year-ending March 1985 imports. Most of the remaining imports from Malaysia entered under TSUSA Nos. 338–5036 and 338.5041, polyester/cotton bleached and printed fabrics, respectively. These imports from Malaysia are entered at duty-paid landed values which are below the U.S. producer price for comparable fabrics. These and other factors lead the United States Government to conclude that imports from Malaysia are creating a real risk of market disruption in the United States for such fabrics.

U.S. Market Share Loss

The U.S. producers' share of lightweight polyester/cotton fabric market declined from 67 percent in 1982 to 58 percent in 1983 and continued to drop in 1984 at 48 percent. The U.S. market for these fabrics expanded during this period, however, the increase in imports accounted for all the market growth from 1982 to 1984.

U.S. Production

U.S. production of these fabrics produced for sale has trended downward since data became available in 1982. During 1982–1984, annual production of lightweight polyester/cotton fabrics for sale dropped in each year declining from 82.6 million square yards to 69.5 million, or an average decrease of 6.5 million square yards per year.

Imports

U.S. imports of Category 613 Pt. from all sources increased by 17.9 million square yards to a record level of 90.8 million square yards in the year-ending March 1985. Imports during the first quarter of 1985 were 23.5 million square yards, up 11 percent from the first quarter of 1984.

Import Penetration

The ratio of imports to domestic production of lightweight polyester/cotton sales fabric has more than doubled in the past two years, rising from 50.4 percent in 1982 to 110.5 percent in 1984.

Import Values

Approximately 75 percent of total Category 613 imports from Malaysia were entered under TSUSA No. 338.5035, polyester/cotton gray plain weave fabrics weighing not over 5 ounces per square yard. The duty-paid values of these imports from Malaysia were below the U.S. producer price for comparable fabrics.

Committee for the Implementation of Textile Agreements

June 7, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 13, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 613pt.[1] produced or manufactured in Malaysia and exported during the prorated consultation period which began on May 29, 1985 and extends through June 30, 1985, in excess of 1,323,313 square yards.[2]

Textile products in Category 613pt. which have been exported to the United States prior to May 29, 1985 shall not be subject to this directive.

Textile products in Category 613pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–14287 Filed 6–12–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 613, currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059.

[2] The level of restraint has not been adjusted to reflect any imports exported after May 28, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices, Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m. Wednesday, 10 July and 8:30 a.m. Thursday 11 July 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 10, 1982.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–14236 Filed 6–12–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Application Notice for New Awards Under the Vocational Education Indian and Hawaiian Natives Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for new projects under the Vocational Education Indian and Hawaiian Natives Program. This application notice covers awards for Indian tribes and Indian organizations and does not apply to awards for Hawaiian natives.

The authority for this program is contained in section 103 of the Carl D. Perkins Vocational Education Act, Pub. L. 98–524.

This program awards grants to Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Educational Assistance Act of 1975, Pub. L. 93–638, (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. sections 452–457). Awards are subject to section 102 of the Indian Self-Determination Act and the relevant provisions of sections 4, 5, and 6 of the Act of 1934.

The purpose of the awards is to provide opportunities to Indian tribes and Indian organizations to plan, conduct, and administer vocational education programs.

Closing date for transmittal of application: Applications for a new awards must be mailed or hand delivered on or before August 16, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (84.101) 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: Applications are accepted from Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the Administration of programs under the Indian Self-Determination and Educational Assistance Act, Pub. L. 93–638, (25 U.S.C. section 450 note) or under the Act of April 16, 1934, (25 U.S.C. sections 452–457).

Proposed regulations under the Carl D. Perkins Vocational Education Act were published in 50 FR–3626–3667 on January 25, 1985. Poposed regulations covering this program, 34 CFR Parts 400 and 410, were included in these regulations. Applications are being accepted based on the proposed regulations. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Group applications: Under the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.127–75.129, eligible parties may apply as a group for a grant.

If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance by the applicant in the application.

The applicant shall submit the agreement with its application.

If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

Each member of the group is legally responsible for carrying out the activities it agrees to perform, in accordance with 34 CFR 75.127–75.129.

Application forms: Application forms and program information packages are expected to be available by June 17, 1985. These may be obtained by writing to the Special Programs Branch, Room 5052, ROB 3, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary is soliciting applications for awards of up to three years duration. Applications for multi-year awards must have the information required by 34 CFR 75.117, including a budget for the first year and an estimate of the Federal funds needed for each budget period of the project after the first budget period.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

Available funds: It is expected that $1,638,371 will be available for new projects in fiscal year 1986 for Indian tribes and Indian organizations.

It is estimated that these funds could support up to 9 new projects.

The anticipated average award for each new project is approximately $180,000 per year.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: Regulations applicable to this program include the following:

(a) When adopted in final form, regulations governing the Vocational Education Indian and Hawaiian Natives Programs proposed to be codified in 34 CFR Parts 400 and 410.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Harvey Thiel or Timothy Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245–2774.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: June 6, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–14263 Filed 6–12–85; 8:45 am]

BILLING CODE 4000–01–M

Application Notice for Noncompeting Continuation Awards Under the Vocational Education Indian and Hawaiian Natives Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for noncompeting continuation awards under the Vocational Education Indian and Hawaiian Natives Program. This application notice is for Indian tribes and Indian organizations only.

The authority of this program is contained in section 103(b) of the Carl D. Perkins Vocational Education Act (Pub. L. 98–524).

Under this program the Secretary may award grants or contracts to Indian tribes and Indian organizations which are eligible to contract with the Secretary of Interior for the administration of programs the Indian Self-Determination Act of 1975, Pub. L. 98–638 (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. section 452–457). Awards are subject to section 102 of the Indian Self-Determination Act, and the relevant provisions of sections 4, 5, and 6 of the Act of 1934.

The purpose of the award is to provide Federal support to Indian tribes and Indian organizations to plan, conduct, and administer vocational education projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

Closing date for transmittal of applications: To be assured of consideration for funding, an applicant for noncompeting continuation awards should mail or hand deliver their applications on or before September 30, 1985.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (84.101) 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: Applications that are hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Officer Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program information: Applications are accepted from Indian tribes and Indian organizations which are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act, Pub. L. 93–638 (25 U.S.C. section 450 note) or under the Act of April 16, 1934 (25 U.S.C. sections 452–457).

Available funds: It is expected that $7,007,268 will be available for 25 noncompeting continuation awards in Fiscal Year 1986 under the Vocational Education Program for Indian tribes and Indian organizations.

These estimates do not bind the Department of Education to a specific number of grants, or to the amount of any grants, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by June 17, 1985. They may be obtained by writing to the Special Programs Branch, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

Proposed regulations under the Carl D. Perkins, Vocational Education Act were published in 50 FR 3626–3667 on January 25, 1985. Proposed regulations covering this program, 34 CFR Parts 400 and 420, were included in those regulations. Applications are being accepted based on the proposed regulations. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary urges that applicants not submit information that is not requested. (Information collection data contained in the application form has been approved by the Office of Management and Budget under OMB control number 1830–0013).

Applicable regulations: Regulations applicable to this program include the following:

(a) When adopted in final form, regulations governing the Indian and Hawaiian Natives Program, proposed to be codified in 34 CFR Parts 400 and 410.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Further Information: For further information contact Harvey G. Thiel or Timonthy D. Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 245–2774.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: June 6, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–14246 Filed 6–12–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

West Valley Demonstration Project: Availability of Project Plan and Nuclear Regulatory Commission Comments

AGENCY: Department of Energy.

ACTION: Notice of Receipt of the Nuclear Regulatory Commission's Comments on the Project Plan for the West Valley Demonstration Project and of the availability of the comments and plan for public inspection.

SUMMARY: The West Valley Demonstration Project Act, Pub. L. 96–368, (October 1, 1980) directs the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Nuclear Service Center in West Valley, New York. The purpose of the project is to demonstrate the solidification and preparation of high-level radioactive waste for placement in a Federal repository for permanent disposal. The Act requires the Department to submit to the Nuclear Regulatory Commission (NRC), for its review and comment, a plan for the solidification of the high-level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. The Act also specifies that upon receipt of the NRC's comments, the Department shall publish notice in the Federal Register of receipt of the comments and their availability for public inspection. In their comment letter of April 11, 1985, the NRC indicated support for the general approach being taken by the Department as discussed by the plan. The Project Plan and NRC comments are available for public inspection at the locations noted below.

Availability: Copies of the Nuclear Regulatory Commission's comments and the Project Plan are available for public inspection at the following locations:

U.S. Department of Energy, Freedom of Information Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, NW., Washington, D.C. 20585

U.S. Department of Energy, West Valley Demonstration Project Public Reading Room, Rock Spring Road, West Valley, New York 14171

FOR FURTHER INFORMATION CONTACT:

Dr. William H. Hannum, Director, West Valley Demonstration Project, U.S. Department of Energy, P.O. Box 191, West Valley, New York 14171

Mr. James a. Turi, Program Manager, West Valley Demonstration Project, U.S. Department of Energy, Mail Stop NE–25, GTN, Washington, D.C. 20545

Issued in Washington, D.C., June 3, 1985.

William R. Voigt, Jr.,

Acting Director, Office of Terminal Waste Disposal and Remedial Action, Office of Nuclear Energy.

[FR Doc. 85–14313 Filed 6–12–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With Union Oil Company of California

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Union Oil Company of California (Union) shall be made final as proposed. The Consent Order resolves the issues of Union's compliance for the period June 1979 through January 1981 with the DOE's regulations regarding marginal and newly discovered crude oil. This matter was the subject of a Proposed Remedial Order (PRO). In settlement of the allegations contained in that PRO, Union will pay to the DOE $4.5 million, for distribution pursuant tp 10 CFR Part 205, Subpart V. Persons claiming to have been harmed by Union's alleged overcharges will then be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Union Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT:

Laurence J. Hyman, Office of Special Counsel, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1985, ERA published a Notice announcing a proposed Consent Order between DOE and Union which would resolve matters pertaining to Union's compliance with the regulations regarding marginal and newly discovered crude oil. (50 FR 8376.) The proposed Consent Order requires Union to pay $4.5 million for the settlement of alleged overcharges of $3.8 million excluding interest.

The March 1 Notice sets forth ERA's view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received three timely written comments and one late written comment.

All four coments addressed only the ultimate disposition or distribution of the Union settlement funds; none addressed the adequacy of the settlement amount or the terms and conditions of the proposed Consent Order. The four commenters were:

Air Transport Association of America, Washington, D.C.

Attorneys General of Arkansas,Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

Attorney General of Texas

Solar Station, Inc., Oakland, CA

III. Analysis of Comments

The March 1 Notice solicited written comments to enable the ERA to receive

information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected.

The comments received voiced no objection to the basis or adequacy of the settlement and were consistent with the use of the special refund procedures of Subpart V. Indeed, the Air Transport Association specifically agreed with the use of the Subpart V procedures, and the Attorneys General stated that the States should receive any funds remaining after distributions to identifiable injured parties. The Attorney General of Texas asserted that because ERA had failed to identify injured parties, restitution to the States would provide the most effective remeddy, but at the same time seemed to approve the use of Subpart V in the instant case. Solar Station, Inc., suggested that the monies be channeled through the California Energy Commission.

ERA has determined that the distribution of the settlement funds should be the subject of a separate Subpart V proceeding conducted by OSHA, to be initiated shortly after publication of this Notice. This is consistent with ERA's general policy that the special refund procedures of Subpart V are the best suited for cases, such as thiss, in which ERA cannot readily identify the injured parties or their relative amount of economic harm. The suggestion of Texas that it is appropriate now to distribute the monies to the States because injured parties have not yet been identified, fails to recognize that it is precisely this situation which Subpart V procedures were designed to address. The Subpart V process also provides an opportunity for publiic participation in the selection of the manner in which claims are considered and honored. ERA believes that the advantages of the Subpart V procedure in identifying meritorious claims and the fact that the monies will continue to earn interest up to the final disbursements strongly support the remedial provision of the proposed settlement. Comments on the actual disbursement of money will accordingly not be addressed here, but will be referred to OHA for consideration in the Union Consent Order claims proceeding.

The review and analysis of all the comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Union. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199j, the proposed Consent Order between Union and DOE executed on February 6, 1985, is made a final order of the Department of Energy, effective the date of publication of this Notice in the **Federal Register**.

Issued in Washington, D.C. on May 31, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR. Doc. 85-14314 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Recordkeeping Requirements

Correction

In FR Doc. 85-12877 beginning on page 21927 in the issue of Wednesday, May 29, 1985, make the following corrections:

1. On page 21928, in the table, above the "Economic Regulatory Administration" heading, insert the heading "DOE Energy Information Collections Extended"; also in the table, above the second "Federal Energy Regulatory Commission" heading, insert the heading "Reinstated DOE Energy Information Collections".

2. On page 21928, at the end of the table, insert the heading "DOE Energy Information Collections Discontinued or Allowed to Expire" and below it the entry "None".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

Oil Pipeline Tentative Valuation

June 10, 1985.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1981 Basic Report

Valuation Docket No. PV-1472-000—Sonat Oil Transmission Inc., P.O. Box 2563, Birminghan, Alabama 35202.

On or before July 18, 1985, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additonal parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-14258 Filed 6-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-535-000 et al.]

Arkansas Oklahoma Gas Corporation et al.; Natural Gas Certificate Filings

June 10, 1985.

Take notice that the following filings have been made with the Commission:

1. Arkansas Oklahoma Gas Corporation

[Docket No. CP85-535-000]

Take notice that on May 22, 1985, Arkansas Oklahoma Gas Corporation (AOG), 115 North 12th Street, Fort Smith, Arkansas 72901, filed in Docket No. CP85-535-000 an application purusant to Sections 7(c) and 7(f) of the Natural Gas Act for a blanket certificate of public convenience and necessity pursuant to the Commission's Order No. 63 program and for a Commission determination of a service area for AOG in which it may enlarge or extend its facilities without further authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AOG proposes that the Commission designate portions of Haskill, Sequoyah, Latimer, and LeFlore Counties, Oklahoma and Crawford, Sebastian, Franklin, Logan, and Scott Counties, Arkansas as AOG's service area to allow the enlargement or extension of its facilities for the purpose of supplying increased market demands in such service area without further authorization. Furthermore AOG requests authorization under the Commission's Order No. 63 program

permitting the transportation and sale of natural gas in interstate commerce and the assignment of natural gas to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities under Sections 311 and 312 of the Natural Gas Policy Act of 1978.

AOG states that upon receipt of the requested determination it would connect certain existing facilities in Sequoyah and LeFlore Counties, Oklahoma with its interstate pipeline segment located in LeFlore County, Oklahoma to enable AOG to deliver newly discovered natural gas reserves for system supply. Currently, the two segments of AOG's system are separated by a blind plate; the connection would be accomplished by removing the blind plate and installing valves, meters and other necessary facilites, it is asserted. Upon receipt of the requested service area determination, AOG also states that it intends to construct two laterals consisting of a 1.2 miles 6-inch pipeline and a 2.5 miles 6-inch pipeline, as well as upgrade an existing compressor station located on AOG's interstate pipeline system in LeFlore County, Oklahoma. AOG asserts the that above facilities are necessary to attach approximately 11,570,000 Mcf of proven reserves to its system.

AOG further states that in the event its request for a determination pursuant to Section 7(f) of the Natural Gas Act is denied then it requests the Commission to deem the application in Docket No. CP85-535-000 as a request for a certificate of public convenience and necessity authorizing the construction of the above facilites.

Finally, AOG points out that it currently holds a certificate under the Commission's Order No. 60 program and Subpart G of Part 284 of the Regulations. In the event the Commission grants the requested service-area determination and the Order No. 63 authorization, AOG proposes to abandon its blanket certificate authorizing it to transport natural gas for the system supply of any other interstate pipeline as received by the Commission's order dated March 18, 1981, in Docket No. CP80-364.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No. CP81-188-006]

Take notice that on May 13, 1985 Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-188-006 a petition pursuant to Section 7 of the Natural Gas Act to amend the order issued August 19, 1981, in Docket No. CP81-188, as amended, so as to authorize the continuation through October 31, 1986, of the transportation and delivery of natural gas to Niagara Mohawk Power Corporation (Niagara Mohawk), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant initially received certificate authorization in Docket No. CP81-188 to transport and deliver gas to Niagara Mohawk. It is explained that the subject gas is sold by Applicant to Niagara Mohawk in a direct sale and is used by Niagara Mohawk to generate electric power at its Albany, New York, steam plant. Applicant states that these certificated services were extended through October 31, 1985, by Commission order of October 4, 1984, 29 FERC ¶ 61,014. Applicant states that it and Niagara Mohawk have agreed to extend the present contractual arrangement for an additonal year, through October 31, 1986, and Applicant herein seeks an extension of the current certificate authorization.

Applicant proposes to continue charging Niagara Mohawk the same 100% load factor Rate Schedule RQ rate, subject to all purchased gas cost adjustments, as required by previous Commission orders.

According to the petition, the subject natural gas is and would be surplus to the needs of Applicant's present customers throughout the proposed one-year extension. Applicant avers that approval of its proposal would help it to maintain an appropriate level of demand sufficient to promote the development of long-term gas supplies, afford Applicant needed market flexibility, assist Applicant in maintaining an appropriate level of purchases from its pipeline and producer suppliers, and allow Niagara Mohawk to displace substantial amounts of No. 6 fuel oil as fuel at its Albany steam plant, thus providing a savings to Niagara Mohawk's customers.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Inter-City Minnesota Pipelines Ltd. Inc.

[Docket Nos. CP85-476-000 and CP85-513-000]

Take notice that on April 30, 1985, Inter-City Minnesota Pipelines Ltd. Inc. (Applicant), 910 Cloquet Avenue, Cloquet, Minnesota 55720, filed in Docket No. CP85-476-000 an application pursuant to section 3 of the Natural Gas Act for permission and approval to abandon a small section of pipeline and to construct and operate replacement facilities. Take further notice that on May 15, 1985, Applicant filed in Docket No. CP85-513-000 a related application pursuant to Executive Order Nos. 10485 and 12038, and Secretary of Energy Delegation Order No. 0204-112, for an amendment to its permit issued on August 10, 1970, in Docket No. CP70-288 for authority to construct, operate, maintain, and connect facilities at the international boundary between the United States and Canada for a proposed river crossing. Applicant's proposals are as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant proposes to install 3,557 feet of 12.75-inch pipeline to relocate its transmission line around the Baudette International Airport and approximately 700 feet of 12.75-inch pipeline to loop the Rainy River crossing from Baudette, Minnesota, to Rainy River, Ontario. Applicant states the relocation of the pipeline around the airport would involve the abandonment of a small section of pipeline.

Applicant states the total estimated cost of the proposed construction is $765,160 and Inter-City Gas Corporation, Applicant's parent, would provide interim financing.

Applicant states that airport taxi-ways cross Applicant's transmission line and that the Federal Aviation Administration (FAA) is concerned about the co-location of the high pressure pipeline and the airport. Applicant states the relocation of the pipeline is required by agreement with the Baudette International Airport Authority and the FAA. Further, Applicant states it desires to build a second river crossing at this time to increase the security of supply and to take advantage of cost savings by constructing the two projects concurrently.

Applicant further states that it is not owned wholly or in part by any foreign government or directly or indirectly subventioned by any foreign government and that it has no contracts with anyone which in any way relate to the control or fixing of rates for the purchase, sale or transportation of natural gas.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of American

[Docket No. CP85-519-000]

Take notice that on May 20, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-519-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of minor facilities to provide delivery and redelivery connections to the Tejas Copano Bay processing plant located in Aransas County, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that since 1961, gas flowing through Applicant's Fulton Beach lateral from the Fulton Beach filed, and later also from Virginia and Nine Mile Point fields, has been processed for the producers' benefit at the Zoller gas plant in Refugio County, Texas. It is explained that the co-owners of the Zoller gas plant, Hunt Industries and Exxon Company U.S.A., desire to shut down permanently the plant and have entered into an agreement with Tejas Gas Corp. (Tejas) to process gas at Tejas' Copano Bay processing plant located about 12 miles upstream of the Zoller plant in Aransas County, Texas. Applicant states that since the Virginia field is downstream of the Copano Bay processing plant, gas from that field is not proposed to be processed at Copano Bay because the producer cannot justify a pipeline from the field to that plant.

Applicant proposes herein to install facilities consisting of a block valve and two side taps to connect and reconnect the Copano Bay plant to its 8-inch Fulton Beach lateral. The estimated cost of such facilities is $44,000, which cost would be reimbursed to Applicant by Tejas.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-438-000]

Take notice that on April 15, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-438-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to continue to transport natural gas for Georgia-Pacific Corporation (Georgia-Pacific), a low priority end-user of natural gas, through December 31, 1986, and for permission and approval to abandon such transportation service effective January 1, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it currently is authorized to provide this same transportation service for Georgia-Pacific through June 30, 1985, under authority granted in Docket No. CP85-242-000 pursuant to Section 157.205 of the Commission's Regulations and Applicant's blanket certificate issued in Docket No. CP82-401-000. Applicant states that, because of the uncertainty which currently exists regarding an extension of the Commission's end-user transportation program beyond June 30, 1985, Applicant is requesting authority to continue to transport natural gas in order to provide market assurance to Georgia-Pacific through December 31, 1986, at the same end-use location and within the maximum daily and annual volumes.

Applicant requests authority to continue to provide essentially the same transportation service in accordance with the same terms and conditions authorized in Docket No. CP85-242-000 with the following exceptions:

1. Applicant requests authority to continue to provide the transportation service authorized in Docket No. CP85-242-000 through December 31, 1986;

2. Applicant requests abandonment authorization of this proposed transportation service effective January 1, 1986;

3. Applicant requests a waiver of Section 284.122(b)(B)(ii) of the Commission's Regulations for all third-party transporters providing, under the self-implementing regulations established under Subpart C of Part 284 of the Commission's Regulations, incidental transportation to Applicant's proposed transportation herein; and

4. Applicant would continue to charge the same transportation rate authorized in Docket No. CP85-242-000; however, such rate would be based upon Applicant's system-wide average cost of service and allocation factor (4.65 cents per 100 miles of forward-haul plus 0.1 cent per Mcf for general and administrative expenses) derived from Applicant's settlement agreement in Docket No. RP82-71-000 approved by the Commission's order dated April 28, 1983. Such rate would not be charged pursuant to Applicant's Rate Schedule EUT-1 which also is due to expire on June 30, 1985, for low-priority end-user transportation services, it is explained.

Applicant requests that the Commission authorize its proposal irrespective of the actions taken by existing interstate pipelines providing incidental transportation in Docket No. CP85-242-000, since Applicant currently is authorized and is requesting continued authority to add new sources of supply, Applicant receipt points, and Applicant delivery points (subject to certain reporting requirements) which may not involve the incidental transporters currently identified in Docket No. CP85-242-000.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-511-000]

Take notice that on May 16, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-511-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas in accordance with the provisions of a General Rate Schedule, referred to as Rate Schedule GS-1, and to transfer existing volumes of firm entitlement from participating customers under existing firm rate schedules to proposed Rate Schedule GS-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to establish a new sales rate schedule, Rate Schedule GS-1, which is the result of negotiations in Applicant's proceedings in Docket Nos. RP82-71, TS83-1-59, TA841-59, and TA85-1-59 as detailed in the stipulation and agreement of settlement filed with the Commission on March 29, 1985. It is stated that the proposed rate schedule was established at the request of certain of Applicant's customers which annually experience cash flow problems during the summer months when sales of natural gas are reduced, and associated revenues received are less than expenses incurred. Applicant states that Rate Schedule GS-1 compliments Applicant's other existing firm rate schedules by offering a one-part rate available to a unique group of customers which experience unnecessary hardships resulting from purchasing natural gas under a two-part rate.

Applicant states that Rate Schedule GS-1 would be available to its distribution customers whose daily firm entitlement is 5500 Mcf of gas per day or less and whose system is connected to and receives natural gas from

Applicant's pipeline system. It is indicated that any of Applicant's distribution customers purchasing gas pursuant to Rate Schedule CD–1 desiring to purchase gas pursuant to the proposed Rate Schedule GS–1 would have the option to switch to this new rate schedule on March 27, 1985 or on November 27 of any subsequent year thereafter.

Applicant states that the firm entitlement available to be purchased under Rate Schedule GS–1 initially would be comprised of the sum of the respective distribution customer's firm entitlement under Rate Schedule(s) CD–1, SS–1, WPS, and PS–1 Rate Schedules of Applicant's FERC Gas Tariff, Third Revised Volume No. 1.

Applicant proposes to charge a one-part commodity rate for services provided under Rate Schedule GS–1. It is stated that such rate would be derived by dividing the participating customers' Docket No. RP82–71 settlement sales volumes into the revenue requirements which would have resulted if the Rate Schedule GS–1 customers had participated in its firm entitlement reduction program under the existing rate schedules. Applicant indicates that such rate currently is $4.4494.

Applicant states that for any new distribution customers or existing distribution customers seeking additional firm entitlement under Rate Schedule GS–1 subsequent to the issuance of an order herein, volumes available to be sold under this proposed rate schedule would be subject to negotiation between Applicant and the distribution customer and would be the subject of a separate Section 7(c) application.

Applicant states that the first year's notification of a customer's intent to participate in Rate Schedule GS–1 was required by April 1, 1985. It is indicated that as a result, the following customers have contracted for service under Rate Schedule GS–1: Municipal Gas System of Cascade, Iowa; City of Gilmore, Iowa; Kansas Power and Light Company; City of Ponca, Nebraska; City of Remsen, Iowa; City of Rolfe, Iowa; City of Stromsburg, Nebraska, and City of Tipton, Iowa.

Comment date: June 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP81–482–003]

Take notice that on May 20, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81–482–003 a petition to amend the order issued May 14, 1982, in Docket No. CP81–482–000, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to increase the maximum daily quantity of gas authorized to be transported by Tennessee for Amoco Production Company (Amoco), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Tennessee states that it is currently authorized to transport up to 45,000 Mcf of natural gas per day for Amoco from Amoco's Eugene Island Block 322 A platform to the inter-connections of Tennessee's facilities with those of Florida Gas Transmission Company (Florida) near Carnes, Mississippi, at the existing delivery point in St. Bernard Parish, Louisiana, and at a point of delivery in Calcasieu Parish, Louisiana. It is further stated that the gas transported by Tennessee is used by Amoco to assist it in meeting its warranty contract obligations to Florida and/or Florida Power and Light Company (FP&L).

Pursuant to an amended gas transportation agreement dated March 27, 1985, Tennessee proposes to increase the maximum daily transportation quantity from 45,000 Mcf of gas per day to 65,000 Mcf per day. On days when Amoco has designated a transportation quantity of 65,000 Mcf of gas per day, Tennessee further proposes to transport for Amoco, on an interruptible basis, an overrun quantity of up to an additional 25,000 Mcf per day. Tennessee indicates that no change in the existing authorized transportation rate for the transportation service is proposed except that Tennessee does propose to charge Amoco an excess demand charge equal to 3.22 cents multiplied by the excess transportation quantity for any volumes of overrun gas transported. Tennessee proposes no other change in the existing authorized transportation service.

Comment date: June 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–14259 Filed 6–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. P–7122–001 et al.]

City of Las Cruces, New Mexico et al.; Surrender of Preliminary Permits

June 10, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. City of Las Cruces, New Mexico

[Project No. 7122–001]

Take notice that the City of Las Cruces, New Mexico, Permittee for the proposed Caballo Project No. 7122, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 31, 1983, and would have expired on July 31, 1985. The project would have been located on the Rio Grande in Sierra County, New Mexico. The Permittee states that a preliminary permit study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 30, 1985.

2. Merced Irrigation District

[Project No. 6593-001]

Take notice that Merced Irrigation District, Permittee for the proposed South Fork Merced River Project No. 6593, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 10, 1983, and would have expired on February 28, 1986. The project would have been located on South Fork Merced River in Mariposa County, California. The Permittee sates that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on May 9, 1985.

3. Ririe Idaho Associates

[Project No. 7790-001]

Take notice that Ririe Idaho Associates, Permittee for the Ririe Dam Project No. 7790, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7790 was issued April 23, 1984, and would have expired September 30, 1985. The project would have been located on Willow Creek in Bonneville County, Idaho.

The Permittee filed the request on May 13, 1985.

Standard Paragraphs:

I. The Preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-14260 Filed 6-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-506-000 et al.]

East Orange General Hospital et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

June 10, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. East Orange General Hospital

[Docket No. QF85-506-000]

On May 23, 1985, East Orange General Hospital, (Applicant) of 300 Central Avenue, East Orange, New Jersey 07019, 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 topping-cycle cogeneration facility will be located at the East Orange General Hospital at East Orange, New Jersey. It will consist of a natural gas fired engine coupled to a synchronous generator. Useful thermal energy will be produced by passing the exhaust gases from the engine through a waste heat boiler, and recovery through a heat exchanger from the engine lube oil and cooling system. The thermal output from the cogeneration system will provide heating, hot water and refrigeration services to the hospital on an "as demanded" basis. The primary energy source of the facility will be natural gas. The electric power production capacity will be 650 kW. The installation of the facility will begin on July 1, 1985.

2. Hartford Hospital

[Docket No. QF85-505-000]

On May 21, 1985, Hartford Hospital (Applicant) of 80 Seymour Street, Hartford, Connecticut 06106 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 at Hartford, Connecticut. The facility will contain two combustion turbine generator sets, two supplementary natural gas-fired heat recovery boilers and a steam turbine generator. The steam will be utilized in the Hospital's steam distribution system for space and water heating and also in the absorption chillers for air conditioning. The primary energy source will be natual gas. The net electrical power production capacity of the facility will be 8,666 kW. The faciltiy is expected to begin commercial operation in January 1987.

3. S.A.M. Partnership Jesse Rifkind

[Docket Nos. QF85-507-000, QF85-508-000, QF85-509-000]

On May 22, 1985, Mark Coppos et al. (Applicants) submitted for filing three applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. Correspondence and communications regarding these applications should be directed to the common agent of the applicants, Taxvest Wind Farms, Inc., 5950 Canoga Avenue, Suite 600, Woodland Hills, California 91367. No determination has been made that the submittal constitutes a complete filing.

Each small power production facility is located in an unincorporated section of Alamada County, California. Each facility consists of one Micon Viking 60/13 wind turbine generator which produce 66 kilowatts at 1,200 rpm and use wind as the energy source.

4. Texas A&M University Research & Extension Center

[Docket No. QF85-517-000]

On May 28, 1985, Texas A&M University Research & Extension Center, (Applicant), of Rt. 2, Box 589 Corpus Christi, Texas 78410 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 25 kilowatt wind facility will be located on Highway 44, Corpus Christi, Texas.

5. Veterans Administration Central Office

[Docket No. QF85-511-000]

On May 24, 1985, Veterans Administration Central Office, (Applicant) of 810 Vermont Avenue NW., Washington, D.C. 20420, 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 at the Veterans Administration Medical Center, San Diego, California. It will consist of a recuperated turbine generator and waste heat recovery boiler. The steam produced by the waste heat recovery boiler will be introduced into the existing high pressure steam header and used principally for heating and cooling loads. The primary energy source of the facility will be natural gas. The electric power production capacity will be 880 kW. The installation of the facility will begin on November 1, 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to 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. 85-14261 Filed 6-12-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeal, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $322,748 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Northeast Petroleum Industries, Inc., a reseller-retailer of petroleum products. Northeast is located in Chelsea, Massachusetts.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0137.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The proposed Decision relates to a consent order entered into by Northeast Petroleum Industries, Inc. (Northeast) and the DOE. The consent order settled possible pricing violations in Northeast's sales of No. 6 residual fuel to customers during the period November 1, 1973 through June 30, 1975.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Northeast pursuant to be consent order. The DOE has tentatively decided that a portion of the consent order funds should be distributed to two first purchasers after each has filed an application for refund. The purchasers in this case were identified by a DOE audit and were alloted funds based on presumptions of injury which the DOE has utilized in past proceedings. However, applications for refund will also be accepted from purchasers not identified by the DOE audit. In the event that money remains in the Northeast escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 4, 1985.

Name of Firm: Northeast Petroleum Industries, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0137.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered with Northeast Petroleum Industries, Inc. (Northeast). Northeast is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Chelsea, Massachusetts. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of No. 6 residual fuel during the period November 1, 1973 through June 30, 1975 (audit period). In order to settle all claims and disputes between Northeast and the DOE regarding the firm's sales of No. 6 residual fuel during the audit period, Northeast and the DOE entered into a consent order on June 19, 1979. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Northeast does not admit that it committed any such violations. Finally, according to the Northeast consent order, the alleged overcharges affected two classes of customers, and separate processes were established by which Northeast would make refunds. Initially, Northeast agreed to refund $167,252, including interest, directly to two end-user customers.[1] In addition, the firm agreed to place $322,748, which includes interest to date of deposit, in an escrow account for DOE to distribute to its other purchasers. The consent order funds were paid in full on April 30, 1982. This Decision concerns the distribution of the consent order funds that were deposited in the Northeast escrow account, plus accrued interest to date.[2]

[1] Our records show that these refunds were made to New England Power Service Company and Boston Edison Company.

[2] Northeast has also deposited funds into three other escrow accounts. One account represented

Continued

II. Proposed Refund Procedures

The purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. 10 CFR Part 205, Subpart V. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties is possible.

During the DOE's audit of Northeast, two first purchasers were identified by ERA as having allegedly been overcharged. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit, or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount alloted to each by ERA, are listed in the Appendix to this decision.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. In addition to using the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby facilitate the distribution of the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims.

There are a variety of reasons for adopting this presumption. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Northeast and were in the chain of distribution where the alleged overcharges occured. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order fund is relatively small, and the time period of the consent order is may years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. However, the information in the record has led us to conclude that the two firms listed in the Appendix are both reseller purchasers. Therefore, it appears that both firms have been authorized refunds larger than the amount that a purchaser may be entitled to receive under the small claims presumption we have proposed. Both of these purchasers will therefore be required to make a specific demonstration of injury prior to receiving the full refund allotted to it in the Appendix. As in previous special refund cases, we will require these firms to show that they did not pass the effects of Northeast's alleged regulatory violations through to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which they could make this showing, these firms should generally demonstrate that at the time they purchased Northeast products, market

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alleged overcharges on motor gasoline during the period November 1, 1973 through April 30, 1974, and has already been distributed in first and second stage refund proceedings. The two other accounts represent, respectively, Northeast's alleged overcharges on motor gasoline during the period May 1, 1974 through August 31, 1979 and Northeast's alleged overcharges on crude oil and residual fuel oil during the period January 1, 1973 through January 28, 1981. The procedures we are proposing below, however, apply only to the escrow account into which Northeast deposited the $322,748.

conditions would not permit them to pass the alleged overcharges on to their own customers in the form of higher prices. In addition, the firms must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

There may also have been first purchasers other than those identified by the ERA audit, as well as subsequent repurchasers, who may have been injured by the alleged overcharges and who therefore could be entitled to a portion of the consent order funds. In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the Northeast consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.* 12 DOE ¶ 85,069 (1984) and cases cited therein. We have concluded that end-users of Northeast petroleum products need only document their purchase volumes from Northeast to make a sufficient showing that they were injured by the alleged overcharges. If these or other additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g., Uban, supra*, at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of No. 6 residual fuel from Northeast, or to submit a statement verifying that it purchased residual fuel from Northeast and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the Northeast proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Northeast Petroleum Industries, Inc. pursuant to the consent order executed on June 19, 1979, will be distributed in accordance with the foregoing decision.

APPENDIX.—NORTHEAST PETROLEUM INDUSTRIES, INC.

First purchaser	Portion of settlement amount [1]
Exxon Company, U.S.A.	$30,534
Atlantic Richfield Company	292,214

[1] Includes interest through April 30, 1982.

[FR Doc. 85-14319 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $29,200 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Buck's Butane and Propane Service, Inc. of San Jose, California. The funds will be available to customers who purchased propane during the period March 1974 through January 28, 1981.

DATE AND ADDRESS: Applications for refund of a portion of the Buck's consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to Buck's Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0043.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Buck's Butane and Propane Service, Inc. (Buck's) of San Jose, California. The Consent Order settled possible pricing and allocation violations with respect to Buck's sales of propane and rental of propane tanks during the period March 1974 through January 28, 1981. Under the terms of the Consent Order, $29,200 has been remitted to the DOE by Buck's and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order fund was issued on March 12, 1985. 50 FR 12609 (March 29, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Application will be accepted from customers who purchased propane from Buck's during the period March 1974 through January 28, 1981. The specific information required in an application for refund is set forth in section IV of the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedures is completed.

Dated: May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 31, 1985.

Name of Firm: Buck's Butane and Propane Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0043.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Buck's Butane and Propane Service, Inc. (Buck's) of San Jose, California.

I. Background

Buck's is a "retailer" of "propane," as these terms were defined in 10 CFR 212.31.[1] In conjunction with its retail sales of propane, Buck's rents propane tanks to its customers. The Federal Energy Administration (FEA), predecessor of the ERA, audited Buck's operations during the period November 1, 1973 through February 29, 1976 (the audit period) and found possible violations of the Mandatory Petroleum price Regulations.[2] In order to settle all claims and disputes between Buck's and the DOE regarding Buck's compliance with the DOE's price regulations in sales of propane and the rental of propane tanks during the period March 1974 through January 28, 1981 (the consent order period), the firm entered into a Consent Order with the DOE on June 26, 1981.[3] In accordance with the Consent Order, Buck's agreed to remit $29,200 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order states that Buck's does not admit to having violated the price regulations in sales of propane and the rental of propane tanks.

On March 12, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Buck's consent order fund. 50 FR 12609 (March 29, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Buck's pricing practices during the consent order period.

A copy of the PD&O was published in the **Federal Register** on March 29, 1985, and comments were solicited regarding the proposed refund procedures. While none of Buck's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, California, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of propane from Buck's should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[4] Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement

[1] Although the Consent Order identifies Buck's as a reseller-retailer, our records indicate that Buck's sold propane only to residential, commercial, and industrial end-users. Accordingly, we have determined that Buck's should be classified as a retailer. *See* 10 CFR 212.31.

[2] In a Remedial Order (RO) issued to Buck's on April 21, 1977, the FEA found that during the audit period, Buck's had overcharged its customers by $95,488.65 in sales of propane and $62,909.82 in the rental of propane tanks. This RO was appealed, and in a Decision and Order issued on November 15, 1977, the OHA remanded the RO in part, requiring that the alleged overcharge amounts be reduced by the total amount of any refunds made by the firm to its customers. *Buck's Butane & Propane Service, Inc.,* 1 DOE ¶ 80,119 (1977). In a subsequent Decision, the OHA rescinded the portion of the RO relating to sales of propane. *Buck's Butane & Propane Service, Inc.,* 2 DOE ¶ 80,102 (1978). Consequently, the only outstanding violation for which Buck's was responsible involved the $62,909.82 in overcharges to customers who rented propoane tanks. The Remedial Order with respect to this violation was affirmed by a United States District Court. *Buck's Butane & Propane Service, Inc.,* v. *Department of Energy,* Fed. Energy Guidlines, Court Decisions 1981-1984, ¶ 26,303 (D.C. Cal. 1981).

The amount Buck's was required to refund was subsequently reduced in a Decision and Order issued by the OHA on June 14, 1978. *Buck's Butane & Propane Service, Inc.,* 8 DOE ¶ 81,046 (1981). In that Decision, the OHA granted exception relief to Buck's permitting the firm to offset $46,888.08 of refunds previously made by the firm to its propane customers against the firm's tank rental overcharges. The OHA determined that this offset was appropriate since the firm's tank rental customers and those to whom it sold propane were virtually identical groups. As a result, the firm's refund obligation was reduced to $16,021.74, plus interest.

[3] The Buck's Consent Order settles all claims with respect to Buck's outstanding liability regarding tank rental transactions during the audit period, as well as all other claims and disputes that may have arisen regarding Buck's compliance with the DOE price regulations in sales of propane and the rental of propane tanks during the consent order period. Although the consent order period (March 1974 through January 28, 1981) does not cover the first four months of the audit period (November 1973 through February 1974), the FEA audit files clearly indicate that Buck's is not liable for any regulatory violations in its sales of propane and rental of propane tanks during those four months.

[4] It is not clear, however, that any of the States that filed comments, except for California, have a direct interest in this proceeding, since all of the sales involved were made in the area of San Jose, California.

agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Buck's consent order fund. We will therefore grant the ERA's petiton and assume jurisdiction over distribution of the fund.

III. Determination of Refund Amounts

As an initial matter, we will adopt our finding that Buck's customers, all of whom were end-users or ultimate consumers, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases.

For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that Buck's customers need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

As proposed in the PD&O, we will also adopt a presumption that any alleged overcharges by Buck's were dispersed equally in all sales of propane made by the firm during the consent order period. In the past, we have referred to this presumption as a volumetric refund amount. *See, e.g., Vickers*. As we stated in the PD&O, the information in the Buck's audit file provides an insufficient basis for computing refunds based on alleged overcharge amounts. Specifically, the consent order period (March 1974 through January 28, 1981) is not coterminous with the audit period (November 1973 through February 1976); the Consent Order covers alleged overcharges in sales of propane as well as tank rentals, while the Remedial Order, as affirmed, applied only to tank rental violations; and only a small percentage of Buck's customers during the consent order period are identified in the audit records. We have therefore determined that a volumetric refund presumption will provide the most efficient and equitable method for distributing the Buck's consent order fund.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.
> 10 CFR 205.282(e)

The volumetric refund presumption we are adopting in this proceeding assumes that any overcharges that occurred were spread equally over all gallons of propane marketed by Buck's. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[5]

As proposed in the PD&O, we will determine the volumetric factor by dividing the consent order fund by the estimated total volume of propane sold by Buck's during the consent order period.[6] In the present case, this results in a refund amount of $0.0007454 for each gallon of propane which an applicant purchased from Buck's. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[7] *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Refund Application Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the consent order fund. Accordingly, we shall now accept applications for refunds from customers who purchased from Buck's during the consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of propane purchased from Buck's for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the consent order period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Buck's Consent Order Fund, Case No. HEF-0043. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is

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[5] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Buck's pricing practices during the consent order period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[6] The present case is different from *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984), in which we based the volumetric refund level on the tank capacity of each claimant. The alleged overcharges in that case were attributable solely to tank rentals, whereas the alleged overcharges covered by the Buck's Consent Order are attributable to sales of propane as well as the rental of propane tanks. In addition, the record in *Buck's Butane & Propane Service, Inc.*, 1 DOE ¶ 80,119 (1977), shows that Buck's tank rental agreements required the firm's tank lessees to fill the tanks only with propane purchased from Buck's. *See* 1 DOE at 80,615. Accordingly, we find it reasonable in the present case to base the volumetric refund level on the volumes of propane sold by Buck's. We have calculated that volume figure by extrapolating available audit data, because the FEA audit files do not list the volumes of propane sold by Buck's during the entire consent order period.

[7] Under the volumetric refund level established in this proceeding, a Buck's customer must have purchased 20,123 gallons of propane during the consent order period in order to qualify for the minimum refund.

confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Buck's Butane and Propane Service, Inc. pursuant to the Consent Order executed on June 26, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay.

Director, Office of Hearings and Appeals.

May 31, 1985.

[FR Doc. 85-14317 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $1,010,000 plus accrued interest in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Warren Holding Company.

DATE AND ADDRESS: Applications for refund must be postmarked by September 11, 1985, should conspicuously display a reference to case number HEF-0192, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the Warren Holding Company which settled alleged violations of DOE price regulations in the sales of motor gasoline and No. 2 heating oil made by several firms controlled by Warren Holding Company during the period November 1, 1973 through April 30, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by September 11, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 4, 1985.

Name of Firm: Warren Holding Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0192.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedureal regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Warren Holding Company (Warren).

Several corporations controlled by Warren Holding Company marketed petroleum products to resellers and end users located primarily in the States of New York, Connecticut, Rhode Island, and Massachusetts. The Warren firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of the firms' records revealed possible price violations with respect to the sales of motor gasoline and No. 2 heating oil from November 1, 1973 through April 30, 1974. The overcharges alleged by ERA were attributed to sales made by the following entities during the following periods:

Company	Product	Period
Mid-Valley Oil Co., Inc., Mid-Valley Petroleum Corp., Newburgh, N.Y.	Motor gasoline	Nov. 1 to Dec. 31, 1973; Jan. 7 to Mar. 31, 1974.
	No. 2 heating oil	Nov. 21, 1973; Dec. 13 and Dec. 19, 1973.
Kenyon Oil Co., Inc., North Grosvernordale, CT.	Motor gasoline	Nov. 16, 1973 to Feb. 28, 1974; Mar. 4 to Apr. 30, 1974.
Petroleum Marketers, Inc., North Grosvernordale, CT.	Motor gasoline	Nov. 1, 1973 to Jan 31, 1974; Mar. 1 to Apr. 30, 1974.
Drake Petroleum Co., Inc., Auburn, MA.	Motor gasoline	Nov. 1 1973 to Apr. 30, 1974.
Warren Petroleum Corp. Rhode Island Oil Co., Inc., Providence, RI.	Motor gasoline	Nov. 1, 1973 to Mar 31, 1974; Apr. 5 to Apr. 7, 1974.

In order to settle all claims and disputes between DOE and the Warren companies regarding the firms' sales of motor gasoline and No. 2 heating oil during the audit period, DOE and Warren Holding Company entered into a consent order on September 12, 1980, in which Warren Holding Company agree to remit $1,010,000 to DOE.[1] This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges.

On April 24, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the money in the Warren escrow account to claimants who satisfactorily demonstrate that they were injured by Warren's alleged violations. 50 FR 18561 (May 1, 1985).

This decision establishes procedures for filing claims in the Warren refund proceeding. We will describe the information that a purchaser of Warren motor gasoline and No. 2 heating oil should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address issues raised by our April 24 proposal.

[1] The Warren consent order does not include sales made by any other subsidiary or affiliate of Warren Holding Company or any unnamed subsidiary of the above-mentioned entities.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Warren consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Warren consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers

We have concluded that applications for refund should now be accepted from claimants who satisfactorily demonstrate that they were injured by Warren's alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of its purchases of motor gasoline and No. 2 heating oil for the applicable periods. If the motor gasoline and No. 2 heating oil was not purchased directly from one of the Warren companies listed above, the claimant will be required to include a statement setting forth its reasons for believing the product originated with Warren. In addition, a reseller or retailer that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement: In the Matter of Ada Resources, Inc.,* 10 DOE ¶ 85,029 at 88,125 (1982).

In addition, a reseller will have to provide some further evidence of injury. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,215 (1982) (hereinafter cited as *Amoco*). A reseller can make this showing by demonstrating that the prices it paid to other suppliers for motor gasoline or No. 2 heating oil were lower than those it paid to Warren. *See, e.g., Tenneco Oil Co./Racetrac Petroleum, Inc.,* 10 DOE ¶ 85,023 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of motor gasoline and No. 2 heating oil marketed by the Warren companies during the periods covered by the consent order. This assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser is allowed to file an application based on a claim that the alleged overcharges had an actual impact greater than that presumed. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Warren's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.,* 11 DOE ¶ 85,226 (1984) and cases cited therein.[2] Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.[3]

In addition to the presumptions we are adopting, we are making a finding that each end-use or ultimate consumer whose business is unrelated to the petroleum industry was injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroluem industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.,* 10 DOE § 85,072 (1983); *see also Texas Oil & Gas Corp.,* 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Warren motor gasoline and No. 2 heating oil that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of motor gasoline or No. 2 heating oil sold by the Warren companies, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 at 85,396–97 (1981). We

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[2] In *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

[3] Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Warren motor gasoline and No. 2 heating oil. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.0149114 per gallon ($1,010,000 received from Warren divided by 67,733,412 gallons of motor gasoline and No. 2 heating oil sold by the Warren companies during the periods covered by the consent order), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proporationate share of the interest accrued on the consent order fund since it was remitted to DOE. As of March 1, 1985, accrued interest will increase the per gallon refund amount by $.0089747 for a total per gallon amount of $.0238861. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

B. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Warren Consent Order Fund, Case Number HEF-0192. An applicant should indicate whether it purchased motor gasoline or No. 2 heating oil, and from whom the motor gasoline or No. 2 heating oil was purchased. If the applicant is not a direct purchaser from one of the Warren companies it should also indicate the basis for its belief that the motor gasoline or No. 2 heating oil which it purchased originated from one of the Warren companies. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Warren motor gasoline or No. heating oil, indicating whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973, through January 27, 1981. If the applicant is a reseller, it must also submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. An applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). In addition an applicant should state whether the applicant has received compensation for any alleged Warren overchanges (such as through a price rollback or refund from Warren, or through a private legal action). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, each applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Each application for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Warren Holding Co. Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Warren consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF-0192 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Warren Holding Company pursuant to the consent order executed on September 12, 1980, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Date: June 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-14320 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 22 Through April 26, 1985

During the week of April 22 through April 26, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

James T. O'Reilly, 4/24/85; *HFA-0273*

James T. O'Reilly (O'Reilly) filed a submission entitled "Appeal from Remanded Disclosure" regarding a response by the Authorizing Official of the Oak Ridge Operations Office of the Department of Energy (DOE) to a remand order issued in *James T. O'Reilly*, 12 DOE ¶80,142 (1984). In his response, the Authorizing Official provided O'Reilly with the final version of a document, but withheld a draft of the document pursuant to Exemption 5 of the Freedom of Information Act (FOIA).

According to O'Reilly, the draft version of the document should be released because the final version has been greatly edited or altered. In considering O'Reilly's submission, the OHA found that O'Reilly failed to provide any supporting factual or legal basis for this contention. Accordingly, the Appeal was denied.

Darci L. Rock, 4/23/85; *HFA-0282*

Darci L. Rock filed an Appeal from a partial denial by a Deputy Director of the Office of Hearings and Appeals of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Deputy Director properly withheld the contested material pursuant to Exemption 5 of the FOIA. The DOE further concluded that discretionary release of the withheld documents would not be in the public interest. The Appeal was therefore denied. Important issues that were considered in the Decision and Order were (i) whether the contested material was deliberative and pre-decisional in nature, and (ii) whether the search for responsive materials was adequate.

Remedial Orders

ERA/Almarc Manufacturing, Inc., 4/22/85; HRW-0026

The Economic Regulatory Administration filed a motion to issue a Proposed Remedial Order (PRO) issued to Almarc Manufacturing, Inc. as a final Remedial Order. Almarc had not filed a Notice of Objection to the PRO with the Office of Hearings and Appeals. The DOE therefore determined that Almarc admitted the findings of fact and conclusions of law contained in the PRO and further consented to its issuance as a final order. The DOE further determined that the remedial provisions of the PRO should be modified to require that the money be distributed pursuant to the Special Refund Procedures of 10 CFR Part 205, Subpart V. The PRO as modified was issued as a final Remedial Order of the DOE.

Warrior Oil Company, 4/23/85; HRO-0182

The ERA alleged tat Warrior violated 10 CFR 212.10 and 212.93, by selling crude oil at prices in excess of maximum legal selling prices. Warrior objected on two grounds. First, Warrior claimed that its product was too heavy to be a liquid, and therefore was not crude oil under the regulatory definition of crude oil. However, based on the evidence, OHA determined that the product was a liquid upon extraction, and remained so until after its sale to Warrior's purchasers. Thus, OHA found that the product was crude oil.

Second, Warrior claimed that it was not a "reseller." According to Warrior, it was in the business of selling "gathering and transportation services," and the fact that it took title to the crude oil in question should be ignored. OHA found that Warrior was a "reseller" since it: (1) Took title to a covered product; (ii) did not substantially alter the product; and (iii) sold the product to a purchaser other than an ultimate consumer. Accordingly, the DOE issued a final Remedial Order to Warrior.

Petition for Special Redress

Great Lakes Electric Consumers Association, 4/26/85; HEG-0038

The Great Lakes Electric Consumers Association (GLECA) filed a Petition for Special Redress in which it requested that approximately 25 percent of the money remaining in escrow after the distribution of refunds in the first stage of special refund proceedings under 10 CFR Part 205, Subpart V, be made available to publicly-owned and consumer-owned electric utilities which submit plans for energy-related projects which benefit petroleum products customers. After considering the GLECA Petition, the Office of Hearings and Appeals (OHA) concluded that another more appropriate proceeding was available for electric utilities that want to be conduits for second-stage refunds. Specifically, the OHA determined that the utilities could file second-stage refund claims on an individual basis in those Subpart V proceedings in which they are able to show that their energy-related projects best serve the equitable and restitutionary goals of the Subpart V process. Accordingly, the GLECA Petition was dismissed without prejudice.

Request for Stay

Revere Petroleum Corporation, 4/26/85; HRS-0047

Revere Petroleum Corporation and Richard Dobyns (Revere) filed a submission with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) seeking a Stay of their obligation to file a Statement of Objections in a related Proposed Remedial Order (PRO) proceeding (Case No. HRO-0125). The basis for the Stay request was the referral by the DOE to the Department of Justice, for possible criminal prosecution, of certain issues in the PRO. According to Revere, following the referral, the DOE was merely gathering evidence for the possible criminal prosecution. Thus, Revere contends that the submission of its Statement of Objections may result in a violation of its constitutional privilege against self-incrimination. In considering Revere's application, the OHA determined that Revere's contentions were unfounded and speculative. Moreover, the OHA found that responding to the PRO would not violate Revere's constitutional privilege against self-incrimination. The OHA found that our procedure in previous cases, requiring submission of the Statement while allowing the party to assert constitutional violations where applicable, adequately protected the party's rights while expediting the underlying proceeding. Accordingly, the Application for Stay was denied.

Motion for Discovery

Doma Corporation, 4/26/85; HRD-0214, HRH-0214

The ERA issued a Proposed Remedial Order (PRO) alleging that Doma Corporation violated the DOE's pricing and certification regulations, 10 CFR 212.93 and 212.131, in resales of crude oil and related products. Doma sought discovery of all the material generated during the ERA's audit of the firm. OHA determined that the ERA has already supplied Doma with all the information needed to understand the legal and factual bases of the allegations set forth in the PRO, and to prepare an adequate defense thereto. Accordingly, OHA concluded that the firm was not in need of additional audit-related materials, and that its request should be denied.

Doma also contends that the PRO was issued only because the ERA auditor responsible for the Doma audit bore a grudge against the firm. In order to support this contention, Doma sought discovery of materials which it says would reveal the agency's motivation for initiating this proceeding. OHA held, as a matter of law, that the question of the ERA auditor's sentiments toward the firm were totally irrelevant to a determination of whether Doma had committed the violations alleged in the PRO. OHA also found that Doma had not supported its claims of improper agency action with a single piece of evidence. Accordingly, OHA denied these requests.

Interlocutory Order

Economic Regulatory Administration/Ozark County Gas, Inc., 4/24/85; HRZ-0239, HRZ-0240

The Economic Regulatory Administration filed Motions to Withdraw and Amend a Proposed Remedial Order issued to Ozark County Gas, Inc. (Case No. HRD-0239). In considering the motions, the DOE found that ERA's proposed amendment—adjusting the total amount of alleged overcharges in the PRO to correct previous calculation errors—would not unduly burden Ozark and would be the most efficient way to continue the enforcement proceeding in an orderly fashion. Therefore, ERA's Motion to Amend the PRO was granted and ERA's previous Motion to Withdraw the PRO was dismissed.

Supplemental Order

Revere Petroleum Corporation, et al., 4/23/85; *HRX-0119*

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Supplemental Order to Revere Petroleum Corporation, *et al.* In the order, issued pursuant to 10 CFR 205.199G of the DOE procedural regulations, the OHA rescinded the Motion to Strike granted in our January 24, 1985, Decision and Order. *Economic Regulatory Administration/Revere Petroleum Corp.*, 12 DOE ¶ 82,544 (1985). Accordingly, the materials stricken from the record in the *Revere* Proposed Remedial Order proceeding (Case No. HRO-0125) have been reinserted into the record.

Implementation of Special Refund Procedures

Glen Martin Heller, 4/25/85; *HEF-0088*

On April 25, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $7,914.90 (plus accrued interest) obtained as a result of a Memorandum and Order issued to Glen Martin Heller by the United States District Court for the District of Massachusetts on December 29, 1981. The funds will be available to customers who purchased motor gasoline from Heller's retail

service station during the period August 1, 1979 through December 1, 1979. Successful applicants will receive refunds proportionate to the volume of motor gasoline they purchased from Heller.

Mallard Resources, Inc., 4/22/85; *HEF-0474*

The DOE issued a Decision and Order concerning a Petition for Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in connection with a consent order with Mallard Resources, Inc. ERA requested that the OHA formulate a mechanism by which parties injured by Mallard's alleged violations of the Entitlements Program could apply for refunds. The Decision and Order determined that, because of the similarities between the violations alleged regarding Mallard and actual or alleged crude oil violations which affected the Entitlements Program covered by other refund proceedings, the application procedures formulated in the *Alkek, Adams,* and *A. Johnson* proceedings would be utilized. The Decision further determined that those parties who filed refund applications in those proceedings would be deemed to have filed an application for refund in the *Mallard* proceeding.

Refund Applications

Consolidated Gas Supply Corporation/C.M. Dining, Inc., 4/23/85; *RF77-0004*

C.M. Dining, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and Consolidated Gas Supply Corporation (Consolidated). The DOE determined that C.M. Dining's allocable share of the Consolidated consent order funds was below the $5,000 injury presumption threshold. Accordingly, the DOE determined that C.M. Dining would not be required to demonstrate injury, and that the firm would receive principal equal to its allocable share of $315. In addition, C.M. Dining received $204 interest accrued on that principal.

Gary Energy Corporation/Cal Gas Corporation, 4/23/85; *RF47-3*

Cal Gas Corporation filed an Application for Refund, seeking a portion of funds remitted by Gary Energy Corporation pursuant to a consent order that Gary Energy entered into with the DOE. In this Decision, the DOE found in general that Gary Energy charged Cal Gas prices for natural gas liquid products (NGLPS) in excess of average market prices. The DOE therefore granted Cal Gas $16,484.95 in refund plus accrued interest, which equals the share of the Gary Energy consent order fund allocated to Cal Gas on the basis of the firm's NGLPs purchase volume.

Standard Oil Co. (Indiana)/Hall's Standard Service, 4/26/85; *RF21-12391*

The Department of Energy (DOE) issued a Decision and Order that reduced a refund granted to Hall's Standard Service in a prior decision. *See Standard Oil Co. (Indiana)/ Garfield Standard, et al.*, 11 DOE ¶ 85,031 (1983). The DOE determined that Hall's had overstated its total volume of purchase. Accordingly, the DOE directed Hall's to remit $148, representing the excess refund money Hall's had received, plus interest.

Waller Petroleum Co., Inc./Naval Research Laboratory, 4/23/85; *RF78-0006*

The DOE issued a Decision and Order concerning one Application for Refund filed by the Naval Research Laboratory (NRL), an end-user of Waller fuel oil. The NRL applied for a refund based on the procedures for filing end-user claims outlined in *Waller Petroleum Co., Inc.*, 12 DOE ¶ 85,148 (1965). After examining the evidence submitted by the applicant, the DOE concluded that the NRL should receive a refund of $3,110, plus interest, based upon the total volume of its Waller fuel oil purchase.

Waller Petroleum Company, Inc./Spoce Petroleum & Chemical Bulk Sales Corporation 4/22/85; *RF78-0003, RF78-0004*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Space Petroleum & Chemical Co. and Bulk Sales Corporation. Both firms are resellers of Waller No. 2 heating oil. The claimants requested full refunds for their purchases from Waller but could not prove that they had been injured by Waller's pricing practices as required in the Waller decision. *Waller Petroleum Co., Inc.*, 12 DOE ¶ 85,148 (1985). Accordingly, the DOE decided to grant the firms' applications in part. The firms received refunds based on the $5,000 threshold figure for the presumption of injury for small claims as set forth in *Waller*. Each firm received a refund of $5,000 plus interest accrued after Waller deposited payment with the U.S. Treasury.

Dismissals

The following submissions were dismissed:

Name	Case No.
Nance Gulf Station	RF40-2975
Scallop Petroleum Corp.	RF21-6738

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 29, 1985.

[FR Doc. 85-14316 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 29 Through May 3, 1985

During the week of April 29 through May 3, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

International Brotherhood of Electrical Workers, 05/03/85; *HFA-0286*

The International Brotherhood of Electrical Workers, Local 125 (IBEW) filed an Appeal from a determination issued by a Contracting Officer of the Bonneville Power Administration denying a request for information which the IBEW had filed under the Freedom of Information Act (FOIA). IBEW had requested copies of payroll reports filed by two contractors. In considering the Appeal, the DOE found that the Contracting Officer had properly withheld the requested information under Exemption 6 of the FOIA, because the privacy interest of individuals identified by this information outweighed any public interest in release. Accordingly, the Appeal was denied.

Ivan Von Zuckerstein, 04/30/85; *HFA-0284*

Ivan Von Zuckerstein filed an Appeal from a partial denial by the Chicago Operations Office of the Department of Energy of a request for information which he had submitted under the Freedom of Information Act (FOIA). The appellant had requested a working copy of a report involving residential energy consumption, arguing that the ideas expressed in that report were not exempt from disclosure, since it was prepared for the DOE by a contractor. In considering the Appeal, the DOE found that a report prepared by a contractor is an agency record. The agency further found that the requested document, which contained stricken material and handwritten additions, was a draft document that was properly withheld under Exemption 5 of the FOIA. Accordingly, the Appeal was denied.

Request for exception

Phillips Petroleum Company, 04/30/85; *BEE-1688*

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR 211.69, the Entitlements Program clean-up regulations, in which the firm sought to file amended monthly ERA-49 forms for errors which it has made on those forms for a period prior to the cut-off date established by the clean-up regulations. In considering the request, the DOE found that the existence of a filing or accounting error does not in and of itself constitute a gross inequity or otherwise warrant exception relief. Accordingly, the application was denied.

Motion for Discovery

Empire Gas Corporation, 05/01/85; *HRD-0261, HRH-0261*

Empire Gas Corporation filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with the firm's Statement of Objections to a Proposed Remedial Order issued to the firm. Empire sought discovery and an evidentiary hearing

concerning the audit methodology and the use of the Special Refund Procedures set forth at 10 CFR Part 205, Subpart V. In considering Empire's Motion for Discovery, the DOE determined that the motion should be granted in part and that the ERA should supply the firm with a copy of the audit workpapers that show how the firm's purchases and sales were matched and how maximum lawful selling prices and alleged overcharges were computed. The DOE determined that in all other respects Empire's request for discovery was either insufficiently specific or involved issues that are not the proper subject for discovery, and should therefore be denied. In considering Empire's Motion for Evidentiary Hearing, the DOE found that Empire had failed to demonstrate that an evidentiary hearing would substantially assist in resolving any disputed factual issues. Accordingly, the motion was denied.

Motion for Evidentiary Hearing

Sun Company, Inc., 05/01/85; HRH-0033

Sun Company, Inc. filed a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm. In its Motion, Sun sought to introduce testimony in the following areas: (1) The meaning of the term "produced" in 10 CFR 212.79; (2) the pricing actions of other working interest owners involved in two properties; and (3) the impact on one Sun property of a global consent order between Getty Oil Company and the DOE. The Office of Hearings and Appeals denied the motion on the grounds that the requested hearing would not produce information which was relevant and material to the resolution of any contested factual issue raised in the underlying enforcement proceeding.

Refund Applications

Richards Oil Company/Pope & Talbot, Inc., et al., 05/02/85; RF70-1, et al.

The DOE issued a Decision and Order granting refunds to 26 end-user purchasers of fuel oil and residual fuel oil from the Richards Oil Company. The refunds to these firms totaled $596,982.31, representing $382,906.90 in principal and $214,075.41 in interest. Among the successful applicants was the State of Minnesota, and end-user of Richards' products, which was granted a total refund of $403,614.34.

Waller Petroleum Company, Inc./SMO, Inc., 04/29/85; RF78-0001

The DOE issued a Decision and Order concerning an Applications for Refund filed by SMO, Inc., a reseller of Waller No. 2 heating oil. The claimant applied for a refund based on the presumption of injury and procedures for filing small claims outlined in *Waller Petroleum Co.*, 12 DOE ¶ 85,148 (1985). After examining the evidence and supporting information submitted by SMO, the DOE concluded that the firm should receive a refund of $8,309 ($4,672 principal plus $3,637 interest) based upon the total volume of its Waller purchases.

Waller Petroleum Company, Inc./Tower Sales, Inc., 05/01/85; RF78-0008

The DOE issued a Decision and Order concerning an Applications for Refund filed by Tower Sales, Inc., a reseller of Waller No. 2 heating oil. The DOE determined that Tower experienced a competitive disadvantage with respect to its purchases of Waller No. 2 heating oil. Accordingly, the DOE concluded that Tower should receive a refund of $11,034 principal plus $8,591 accrued interest, based upon the total volume of its Waller No. 2 purchases.

Dismissal

The following submission was dismissed:

Name	Case No.
Sellers Oil Company	RF7-117

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 31, 1985.

[FR Doc. 85-14315 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of May 20 Through May 24, 1985

During the week of May 20 through May 24, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 5, 1985.

Transcontinental Oil Corp., Shreveport, Louisiana; HEE-0114, reporting requirement

Transcontinental Oil Corporation filed an Application for Exception seeking relief from the requirement that it file Form EIA-23 with the DOE Energy Information Administration. The exception request, if granted, would permit Transcontinental to be exempted from filing Form EIA-23 for Report Year 1984. On May 22, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part, permitting the firm to complete only those portions of Form EIA-23 for which the necessary data were readily available to the firm.

[FR Doc. 85-14318 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Proposed Allocations of Contingent Capacity and Associated Energy From the Boulder Canyon Project Uprating Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program.

SUMMARY: The Western Area Power Administration's (Western) Boulder City Area Office requested applications in the **Federal Register** on January 18, 1985 (50 FR 2717), for power expected to be available beginning June 1, 1987, from the Boulder City Area Projects. The deadline for acceptance of the applications was March 15, 1985.

Applications for power from the Boulder Canyon Project Uprating

Program (Uprating Program) were requested from the Arizona Power Authority, the Colorado River Commission of Nevada, and qualified entities in California pursuant to the Hoover Power Plant Act of 1984 (Hoover Power Plant Act) (98 Stat. 1333) and the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Conformed Marketing Criteria) published in the **Federal Register** on December 28, 1984 (49 FR 50582). As a result of the request for applications, the Boulder City Area Office received and reviewed applications for power from the Uprating Program from the Arizona Power Authority, the Colorado River Commission of Nevada, and seventeen entities in California. These proposed allocations of contingent capacity and associated energy (power) are a result of Western's review and analysis of the applications submitted.

"SUPPLEMENTARY INFORMATION" contains a brief statement of the major reasons and rationale for granting or denying allocations of the power from the Boulder Canyon Project Uprating Program.

Interested parties are invited to submit comments concerning the proposed allocations for the power from the Uprating Program to Western. Western will review and consider each comment prior to publishing final allocations of power from the Uprating Program in the **Federal Register.** Also to be included in that **Federal Register** will be responses to all major comments, criticisms, and alternatives offered during the comment period.

DATES: Written comments concerning the proposed allocations should be submitted on or before July 15, 1985. An opportunity will be given all interested parties to present written or oral statements at a public comment forum to be held on July 1, 1985, at the Plaza Room, Tropicana Hotel, in Las Vegas, Nevada, beginning at 1 p.m.

ADDRESS: Written comments concerning the proposed allocations of power from the Uprating Program should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293-8800.

Proposed Allocations: These proposed allocations of power are made in accordance with the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal power marketing authorities contained in Reclamation laws (43 U.S.C. 372 et seq. and all acts amendatory thereof or supplementary thereto), and the acts specifically applicable to the Boulder Canyon Project.

The Hoover Power Plant Act and the Conformed Marketing Criteria form the basis for the proposed allocations of power.

The contingent capacity and associated energy from the Uprating Program to be allocated pursuant to section 105(a)(1)(B) of the Hoover Power Plant Act and the Conformed Criteria are shown in them following Table 1:

TABLE 1.—CONTINGENT CAPACITY AND ASSOCIATED ENERGY

State	Contingent capacity (KW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,650	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Total	503,000	535,650	231,364	767,214

The proposed allocations within each State are shown in Table 2. The availability of the allocated contingent capacity and associated energy is predicated upon the successful completion of the Uprating Program which will be constructed in stages and is currently scheduled to be completed in 1992. Power deliveries will vary during the construction period depending upon the actual capacity generated. Power contracts will become effective on June 1, 1987, and will contain an estimated schedule for power deliveries from the Uprating Program as each phase of the Uprating Program is completed. In the event that any part of the Uprating Program is not completed, or the capacity output is not sufficient to meet the allocated capacity or energy, the total amount of contingent capacity and associated energy initially allocated to contractors will be reduced on a proportional basis.

TABLE 2.—PROPOSED ALLOCATIONS

State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
Arizona:				
Arizona Power Authority	188,000	148,000	64,000	212,000
Nevada:				
Colorado River Commission	188,000	288,000	124,000	412,000
California:				
City of Anaheim	40,000	36,255	15,745	52,000
City of Azusa	4,000	3,486	1,514	5,000
City of Banning	2,000	1,394	606	2,000
City of Burbank	15,000	3,794	1,648	5,442
City of Colton	3,000	2,789	1,211	4,000
City of Glendale	2,000	2,894	1,257	4,151
City of Pasadena	9,000	2,525	1,096	3,621

TABLE 2.—PROPOSED ALLOCATIONS—Continued

State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		
		Summer	Winter	Total
City of Riverside	30,000	27,191	11,809	39,000
City of Vernon	22,000	19,522	8,478	28,000
Total California	127,000	99,850	43,364	143,214
Total	503,000	535,850	231,364	767,214

In the event that a potential contractor fails to place power under contract in accordance with the terms and conditions offered by the United States or fails to provide contributed funds to the Department of the Interior, Bureau of Reclamation, for the Uprating Program within a reasonable time as determined by the United States, the amounts of power allocated to such potential contractor will be subject to reallocation pursuant to the Conformed Marketing Criteria.

SUPPLEMENTARY INFORMATION: Each application was reviewed as to eligibility under the Hoover Power Plant Act and Conformed Marketing Criteria. Once eligibility was determined, conflicting applications were reviewed, giving perference to States and municipalities. In addition, the following policy factors were considered in the allocation of the Uprating Program power:

1. Ability to receive and distribute the allocation of Federal power.
2. Operation of an electrical utility system.
3. The amount of other Federal resources available to an applicant.

The entities given the proposed allocation provided information supporting their eligibility under the Hoover Power Plant Act and Conformed Criteria. Each proposed allottee is a preference entity under the Boulder Canyon Project Act, has the ability to receive and distribute the allocated power, and owns and operates their own electrical utility system.

Those eligible preference entities with no other Federal resources were given priority as to allocation. The remaining available Uprating Program power was allocated to eligible preference entities with other Federal resources based on the amount of other Federal resources available to the entity and the entity's estimated percentage of load served by Federal resources.

The entities listed below were not selected for an allocation of power for the reasons stated:

Federal Agencies: The following Federal entities were not selected

because the Hoover Power Plant Act requires the Uprating Program to be undertaken with funds advanced by non-Federal purchasers and these Federal entities are not preference entities for Boulder Canyon Project resources in accordance with section 5 of the Boulder Canyon Project Act:

George Air Force Base.
Department of the Navy, Naval Public Works Center.

State Agencies: The University of California was not selected because its application was submitted by the University in its capacity as a constitutionally autonomous State University system and not in the sovereign capacity of the State of California and, as such, is not entitled to special preference contained in section 5 of the Boulder Canyon Project Act. Further, the University is not a municipality and, as such, is not preference entity under section 5 of the Boulder Canyon Project Act. Further, the University is not considered to be an electrical utility because it does not have electrical utility responsibility.

Investor-Owned Utilities: San Diego Gas and Electric was not selected because it is an investor-owned utility and as such is not a preference entity.

Irrigation and Water Districts: The following water districts were not selected because the water districts are not preference entities under the Boulder Canyon Project Act. Further, they do not own and operate an electrical utility system:

Las Virgenes Municipal Water District
Ramona Municipal Water District

The Imperial Irrigation District was not selected because the District is not a preference entity under the Boulder Canyon Project Act. Further, the District has an equitable proportion of Federal power resources compared to the other entities under consideration.

Municipalities: Th city of Needles was not selected because the city of Needles has a larger percentage of their load served by Federal resources than the other entities under consideration.

Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.), each agency, when required to publish a notice of public rule, shall prepare for public comments, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the allocation criteria and proposed allocations relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and the Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE-EA-204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Allocation Criteria for the Boulder Canyon Project Uprating Program were addressed in the Criteria.

The Criteria Environmental Assessment addressed the impact of the offer of additional power from the Uprating Program. Western made a determination based upon environmental considerations of the final Criteria that this action is not a significant action in the context of the National Environmental Policy Act, and that it will not lead to any significant environmental impacts.

Additional Information

The following materials relative to the proposed allocation of Boulder Canyon Project power are available for inspection at the Boulder City Area Office:

1. Applications received requesting power from the Boulder Canyon Project Uprating Program.

2. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

3. **Federal Register** notice (50 FR 2717) dated January 18, 1985, publishing the "Request for Applications for Power from Boulder City Area Projects."

4. Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, Western Area Power Administration, April 1983.

Issued at Golden, Colorado, June 5, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-14321 Filed 6-12-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 140061; FRL-2849-8]

Access to Confidential Business Information by Two Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractors, Jellinek, Schwartz, Connolly, and Freshman (TSCF), of Washington, D.C., and Planning Research Corporation (PRC), of Chicago, Illinois, with access to information submitted to EPA or collected by the Agency under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under these contracts will not take place prior to June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll-Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. EPA must evaluate new chemicals (i.e., those not listed on the TSCA Inventory of Chemcial Substances) under section 5 of TSCA. Existing chemicals (i.e., those listed on the TSCA Inventory) are evaluated by EPA under sections 4, 6, 7, and 8 of TSCA.

Contract No. 68-02-4215 provides that JSCF, 1350 New York Avenue NW., Suite 400, Washington, D.C., will assist EPA's Economics and Technology Division (ETD) by providing policy analysis and information gathering support for ETD's regulatory activities under various sections of TSCA. Under this contract, JSCF will, among other things, analyze policy issues, formulate regulatory and non-regulatory options

and strategies, provide support for negotiations, analyze possible Agency responses to TSCA section 21 petitions, evaluate section 5 exemption applications, review and integrate technical, economic, and scientific documents, organize and conduct workgroups and conferences, and analyze international issues relating to the regulation of toxic chemicals. Under this contract, JSCF will be allowed access to CBI submitted under sections 4, 5, 6, and 8 of TSCA on a need-to-know basis. Access to such CBI may take place both at EPA and on JSCF premises in Washington, D.C.. EPA has approved JSCF's security manual and no TSCA CBI will be transferred to JSCF until EPA has inspected the JSCF facilities and approved them for storage and use of TSCA CBI. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1986.

EPA's Hazardous Waste Ground Water Task Force (HWGWTF) gathers information about hazardous waste and evaluates hazardous waste land disposal facilities to determine the adequacy of ground water monitoring systems. Contract No. 68-01-7037 provides that PRC, 303 East Wacker Drive, Suite 600, Chicago, Ill., will assist the HWGWTF by gathering, organizing, and categorizing information from EPA Regional offices, States, and other sources on ground water monitoring systems at various hazardous waste land disposal facilities. Among the materials PRC will review are documents and reports from EPA inspections. These inspections have been or will be conducted under the authority of the Resource Conservation and Recovery Act (RCRA). In the course of these inspections, the persons inspected may assert claims of confidentiality for information obtained by EPA inspectors during the inspections. In some cases, the persons have asserted that the information is TSCA CBI, even though the inspections were not carried out under the authority to TSCA, apparently in an attempt to constrain EPA's use of the information. Even though such information does not constitute TSCA CBI under EPA's regulations, since such claims have been asserted, EPA is treating the information as TSCA CBI until appropriate determinations have been made and the persons making the claims have been notified of the determinations. Accordingly, EPA has determined that, under this contract, PRC employees must be authorized for access to materials claimed as confidential from EPA RCRA inspections. Access to CBI under this contract may take place both on EPA premises and at PRC facilities in Chicago. EPA has reviewed and approved PRC's security plan and no information claimed as TSCA CBI will be transferred to PRC facilities until EPA has inspected and approved them for storage and use of TSCA CBI. Access to TSCA CBI under this contract is scheduled to expire on December 31, 1986.

In accordance with 40 CFR 2.306(j), EPA has determined that JSCF and PRC may require access to information claimed as confidential under TSCA to perform work successfully under these contracts. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide these contractors access, on a need-to-know basis, to the TSCA CBI materials described in the preceding paragraphs.

Any TSCA CBI materials reviewed at JSCF and PRC will be returned to EPA upon the completion of the contractors' review.

JSCF and PRC have been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are authorized for access to TSCA CBI.

Dated: May 29, 1985.

E.F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-14283 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3207/T494; FRL-2849-9]

Mycogen Corporation; Establishment of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for residues of the fungus *Alternaria cassiae* (hyphal fragments) to evaluate control of sicklepod *Cassia obtusifolia* on the crops soybean, peanut and cotton.

DATE: This temporary exemption from the requirement of a tolerance expires May 10, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: Mycogen Corporation, 5451 Oberlin Dr., San Diego, CA 92121, has requested in pesticide petition PP 5G3207, the establishment of an exemption from the requirement of a tolerance for residues of the fungus *Alternaria cassiae* (hyphal fragments) to evaluate control of sicklepod *Cassia obtusifolia* on the crops soybean, peanut and cotton.

This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 53219-EUP-1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Mycogen Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing of safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires May 10, 1986. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use

permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerances levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 4, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-14282 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66119; FRL-2850-1]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: July 15, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
150-26	Anderson's 18½% DDVP Concentrate	Anderson Chemical Co., P.O. Box 1041 Litchfield, MN	May 20, 1965.
655-4	Prentox * 50% Sabadilla Dust Concentrate	Prentiss Drug and Chemical Co., Inc., C.B. 2000 21 Vernon St., Floral Park, NY	May 24, 1948.
1386-116	Rat-Rid Kills Rats and Mice	Malter International Corp., International Headquarters, P.O. Box 6099, New Orleans, LA.	May 24, 1972.
2204-2	Nopcocide * 130	Diamond Shamrock Chemicals Co., Porcess Chemicals Div., P.O. Box 2386-R, Morristown, NJ.	July 7, 1971.
2204-6	Nopcocide * 150	do	Aug. 11, 1971.
2204-13	Nopcocide * 152	do	July 22, 1974.
2460-36	Gowan's 5% Malathion Dust	Howerton Gowen Co., Inc., P.O. Box 247, E. 11th St., Roanoke Rapids, NC	Aug. 15, 1960.
3509-95	Safe-Way Brand Fly Bait	Safe-Way Farm Products Co., Inc., 2519 East 5th St., Austin, TX	Aug. 6, 1975.
3837-33	Meth-O-Sect	LuBar Co., 1700 Campbell, P.O. Box 588, Kansas City, MO	June 5, 1973.
4887-111	Warfarin Rat Bait Meal	Stephenson Chemical Co., Inc., P.O. Box 87188, College Park, GA	Nov. 2, 1982.
5011-42	Carmel Food Protectant Formula F-7	Carmel Chemical Corp., P.O. Box 406, Westfield, IN	May 15, 1958.
7122-76	Guardian Methoxychlor 2E	The Archem Corp., 1514 Eleventh St., Portsmouth, OH	Feb. 16, 1971.
8142-1	Vet-Aid Vapona Insecticide Fly Spray	Vet-Aid Industries, 459 West 78th St., Minneapolis, MN	July 5, 1963.
8590-48	60 Spray Oil Trithion E	Agway Inc., Chemical Div., P.O. Box 4741, Syracuse, NY	Feb. 15, 1965.
8590-178	Thiram-Trithion-9.6-6D	do	Sept. 9, 1965.
8698-2	Parapet (Kills Fleas, Lice, and Ticks)	Eight In One Pet Products, Inc., 100 Emjay Blvd., Brentwood, NY	Apr. 22, 1965.
8886-3	AVC Residual Insecticide	Ace Exterminating Co., 7666 B Production Dr., Cincinnati, OH	Aug. 7, 1974.
9275-44	Berrien 15% Fermate Dust	Berrien Products Co., Inc., P.O. Box 725 Nashville, GA	Jan. 15, 1968.

The Agency has agreed that each cancellation shall be effective July 15, 1983 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply is exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66119]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: (7 U.S.C. 136d).

Dated: June 4, 1985.

Steve Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-14281 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59193B; FRL-2850-2]

Approval of Test Marketing Exemption; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-42. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613B, 401 M St., SW., Washington, DC 20460, (202-382-2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

EPA hereby approves TME-85-42. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-42. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T85-42

Date of Receipt: April 25, 1985.

Notice of Receipt: May 3, 1985 (50 FR 18919).

Applicant: Confidential.

Chemical: (G) Acrylate-substituted phenoxy resin.

Use: (G) Coating for open non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Four months. *Commencing on:* June 4, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Pubic Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 4, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-14280 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59194A; TSH-FRL 2851-1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for testing marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-44 and TME-85-45. The test marketing conditions are described below:

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-609C, 401 M Street, SW., Washington, D.C. 20460, (202-382-3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-44 and TME-85-45. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses, and number of customers must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME-85-44 and TME-85-45. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-85-44

Date of Receipt: May 2, 1985.

Notice of Receipt: May 10, 1985 (50 FR 19801).
Applicant: Confidential.
Chemical: (G) Halogen substituted alkyl polyalkyleneoxide.
Use: Confidential.
Production Volume: 7,727 Kg.
Number of Customers: Confidential.
Worker Exposure: Manufacture and use: a total of 35 workers at 1 site for 8 hours a day, 14 days.
Test Marketing Period: Nine months.
Commencing on: June 7, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME–85–45

Date of Receipt: May 2, 1985.
Notice of Receipt: May 10, 1985 (50 FR 19801).
Applicant: Confidential.
Chemical: (G) Halogen substituted alkylpolyalkyleneoxy sulfonic acid salt.
Use: Confidential.
Production Volume: 9,091 Kg.
Number of Customers: Confidential.
Worker Exposure: Manufacture: a total of 35 workers at 1 site for 8 hours a day, 14 days. Use: a total of 4 workers per site at 120 sites, 2 hours per site.
Test Marketing Period: Nine months.
Commencing on: June 7, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restructions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 7, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–14273 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59193A; FRL–2850–3]

Approval of Test Marketing Exemption; Certain Chemicals.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). TME–85–41. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613B, 401 M St., SW., Washington, DC. 20460, (202–382–2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

EPA hereby approves TME–85–41. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–41. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T85–41

Date of Receipt: April 25, 1985.
Notice of Receipt: May 3, 1985 (50 FR 18919).
Applicant: Confidential.
Chemical: (G) Acrylate-substituted vinyl chloride copolymer resin.
Use: (G) Coating for open non-dispersive use.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Confidential.
Test Marketing Period: Four months.
Commencing on: June 4, 1995.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 4, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–14279 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2850–4]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on June 26–27, 1985, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:00 a.m. on June 26, 1985, and adjourn no later than 1:00 p.m. on June 27, 1985.

The principal purposes of the meeting will be (1) to review the scientific adequacy of a Draft Risk Assessment Document on Formaldehyde prepared by the Office of Toxic Substances and dated May 31, 1985; (2) to receive briefings from the Health Assessment Document Subcommittee and the Metals

Subcommittee; and (3) to discuss upcoming issues of current interest to the Committee.

For additional information on the Draft Risk Assessment Document on Formaldehyde, please contact Mr. Richard Hefter by phone at (202) 475-6712 or by mail to: Office of Toxic Substances (TS-778), 401 M Street, SW., Washington, D.C. 20460.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, D.C. 20460, no later than c.o.b. June 19, 1985.

Dated: June 5, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-14278 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-2850-5]

Approval of PSD Permits, Extension of PSD Permits, and Rescission of a PSD Permit; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-634—Koch Refining Company:* This permit, issued on January 9, 1985, authorizes the modification of the existing fluid catalytic cracking unit at the existing petroleum refinery located approximately ½ mile north of Interstate 37 on the Viola Turning Basin in Corpus Christi, Nueces County, Texas.

2. *PSD-LA-522—Placid Refining Company:* This permit, issued on January 17, 1985, authorizes the operation of Boiler B-902 at full capacity at the existing petroleum refinery located on the west bank of the Mississippi, approximately one mile north of Port Allen, West Baton Rouge Parish, Louisiana.

3. *PSD-TX-445M-2—Production Operators, Incorporated:* PSD-TX-445M-2 modifies PSD-TS-445M-1 by (1) deleting two 250 hp engines and two 1000 hp engines; (2) changing the sampling method from grab samples to continuous monitor sampling/analysis; and (3) eliminating the automatic air to fuel ratio controllers on each engine at the existing carbon dioxide recovery facility located approximately 3 miles north of Fort Stockton, Pecos County, Texas. This modified permit was issued on January 21, 1985.

4. PSD-TX-493M-1—CoGen Lyondell, Incorporated: PSD-TX-493M-1 modifies PSD-TX-493 to add supplemental natural gas firing capability to three of the five heat recovery steam generators covered by TX-493 at the existing synthetic organic chemical plant (Arco Chemical Company) located at 8520 Sheldon Road, approximately 2 miles north of Channelview, Harris County, Texas. This modified permit issued on February 8, 1985.

5. *PSD-TX-103M-2—Phillips Petroleum Company:* Sweeny petroleum refinery located at the intersection of State Highway 35 and FM Road 581 in Old Ocean, Brazoria County, Texas. PSD-TX-103M-2 modifies TX-103M-1 to inrease the opacity limitation on the heavy oil cracker to a maximum of 20 percent due to economic considerations involved in operating on a long term basis within the permitted 10 percent maximum opacity limit. This modified permit was issued on February 8, 1985.

6. *PSD-TX-641—Badische Corporation:* This permit, issued on February 12, 1985, authorizes the construction of an acrylic acid plant at the existing industrial facility located on State Highway 332, approximately one mile southeast of Clute, Brazoria County, Texas.

7. *PSD-TX-621—University of Texas at Austin:* This permit, issued on February 15, 1985, authorizes the construction of a gas turbine and waste heat boiler at the existing power plant located in 24th Street between Speedway Street and San Jacinto Boulevard in Austin, Texas County, Texas.

8. *PSD-TX-636—Exxon Corporation:* This permit, issued on February 19, 1985, authorizes the addition of 13 natural gas compressor engines and one dehydrator at the existing gas processing plant located approximately 5½ miles southeast of Conroe, Montgomery County, Texas.

9. *PSD-LA-518—Uniroyal Chemicals:* This permit, issued on February 26, 1985, authorizes by-passing the nitrogen oxide scrubber on the nitrosator vent in the Flexzone plant at the existing chemical manfacturing facility located on the eastern bank of the Missippi River, approximately 25 miles southeast of Baton Rouge in Geismar, Ascension Parish, Louisiana. By-passing the scrubber was approved because of an explosion in an identical scrubber. E.I. duPont Allied Technical Division and the Material Evaluation Laboratory recommended the safest method of operation to be atmospheric venting without the scrubber.

10. *PSD-TX-432M-2—Champlin Petroleum Company:* PSD.TX-532M-2 modifies PSD-TX-432M-1 to permit the installation of five 800 horsepower engines instead of one 2750 horsepower engine presently permitted at the existing cryogenic natural gas expander plant located on Highway 79, approximately 4 miles northwest of Carthage, Panola County, Texas. The modified permit was issued on March 12, 1985.

11. *PSD-TX-633—Power Systems Engineering, Inc.:* This permit, issued on March 14, 1985, authorizes the construction of a gas turbine cogeneration facility to be located on Battleground Road, LaPorte, Harris County, Texas.

12. *PSD-TX-642—Amoco Chemicals Corporation:* This permit, issued on March 19, 1985, authorizes the construction of a natural gas-fired turbine cogeneration unit at the existing Chocolate Bayou Plant located on FM Road 2004, approximately 15 miles southeast of Alvin, Brazoria County, Texas.

13. *PSD-TX-622—Superior Oil Company:* This permit, issued on March 19, 1985, authorizes the addition of 2 natural gas-fired reciprocating engines at the existing Portilla Gas Plant located approximately 5 miles northeast of Sinton, San Patricio County, Texas.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. *PSD-OK-218—Oklahoma Gas and Electric Company (OG&E).* This permit was issued on October 5, 1981, for the construction of two additional 550 MW coal-fired steam electric generators at the existing Sooner Station located on Highway 15, approximately 19 miles north of Stillwater in Noble County, Oklahoma. Construction has not commenced due to the reduction of growth in demand for energy for OG&E.

The extension was granted on March 25, 1985, to a new expiration date of July 28, 1986.

2. *PSD-NM-350—Southern Union Refining Company:* This permit was issued on October 5, 1981, to increase the capacity of the existing refinery located on Highway 18, approximately 5 miles south of Lovington, Lea County, New Mexico. Construction has not commenced due to the present economic conditions. The extension was granted on March 8, 1985, to a new expiration date of November 8, 1985.

3. *PSD-NM-418—Plains Electric Generation and Transmission Cooperative:* This permit was issued on December 29, 1981, for the installation of a new gas turbine electric generating unit at the existing Algodones Power Plant located on Highway 85, approximately 7.5 miles northeast of Bernalillo, Sandoval County, Mexico. Construction has not commenced due to significant declines in industrial and agricultural activities, therefore delaying the need for both new base load and peaking load generation. The extension was granted on March 8, 1985, to a new expiration date of July 4, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

Notice is hereby given that the Environmental Protection Agency (EPA) Region 6, rescinded the following Prevention of Significant Deterioration (PSD) permit:

1. *PSD-NM-215—Thomason Construction Company:* The permit was issued on July 27, 1979, for the construction of a new hot asphalt drum mix facility located approximately 1.5 miles west of Hobbs, Lea County, New Mexico. This source no longer constitutes a major stationary source since, under the new definition of "potential to emit", contained in 40 CFR 52.21 of the amended PSD regulations published in the Federal Register on August 7, 1980, the controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit was no longer required for this facility and rescinded the permit.

A notice of EPA's proposed action to extend/rescind the PSD permits was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals for Texas and Louisiana and the Tenth Circuit Court of Appeals for Oklahoma and New Mexico within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

FOR FURTHER INFORMATION CONTACT: Jack Divita at (214) 767-2746.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Dated: May 29, 1985.

Dick Whittington, P.E.,

Regional Administrator, Region 6.

[FR Doc. 85-14277 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 7, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0106
Title: Section 43.61, Reports of Overseas Telecommunications Traffic
Action: Revision
Respondents: Common carriers providing international telecommunications services
Estimated Annual Burden: 10 Responses; 1,000 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-14243 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 7, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 95-511.

Copies of these submissions are available from the Commission by calling Doris R. Peacock, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB No. 3060-0127
Title: Assignment of Authorization
Form No.: FCC 1046
Action: Extension
Estimated Annual Burden: 6,000 Responses; 498 Hours.

OMB No.: 3060-0141
Title: Renewable Notice and Certification in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402-R
Action: Extension
Estimated Annual Burden: 2,900 Responses; 2,900 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-14244 Filed 6-12-85; 8:45 am]

BILLING CODE 6712-01-M

Telescan, Inc. Requests FCC Approval of System for Verification of TV Commercials; Pleading Cycle Established

June 10, 1985.

On May 7, 1985, TeleScan, Inc. submitted a request for FCC approval of a system for independent verification of broadcast of television commercials. The TeleScan system encodes advertiser identification information onto the broadcast television signals. A special monitoring receiver is used to decode and record this information, along with the date, time of day, length of commercial, and presence of audio and video signals. TeleScan intends to use

the recorded information to provide various reports for its advertiser clients. Telescan seeks approval to transmit the data signals for this system on line 22 of the television active video signal.

The Mass Media Bureau requests comments on this filing. Parties wishing to file formal comments on the issues raised therein may do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554, on or before July 5, 1985. Reply comments may be filed on or before July 15, 1985. Comments and reply comments should refer to the following number: MMP–1.

Copies of TeleScan's request for approval and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 4006 University Drive, Fairfax, Virginia 22030, (703) 352–2400/ (202) 296–7322. Any documents related to this matter will also be available for public inspection during regular business hours in the Commission's Mass Media Public Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, NW.).

For further information contact Alan Stillwell at (202) 632–6302.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–14242 Filed 6–12–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Southern California Savings & Loan Association, Beverly Hills, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southern California Savings and Loan Association, a Federal Savings and Loan Association, Beverly Hills, California, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14324 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

Community Federal Savings & Loan Association of Nashville, Nashville, TN; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 5(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Community Federal Savings and Loan Association of Nashville, Nashville, Tennessee, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14325 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

Magnolia Federal Savings & Loan Association, Knoxville, TN; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 5(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Magnolia Federal Savings and Loan Association, Knoxville, Tennessee, on June 7, 1985.

Dated: June 10, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–14326 Filed 6–12–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; International Movements, Inc.; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 [46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Names/Address	Date reissued
2158–R	International Movements, Inc., 4965 Mountain Road, Pasadena, MD 21122.	May 30, 1985.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85–13654 Filed 6–12–85; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003813–010.

Title: Honolulu Terminal Agreement.

Parties:

Department of Transportation of the State of Hawaii (Hawaii)

Matson Terminals, Inc. (Matson)

Synopsis: Agreement No. 224–003813–010 provides for: Hawaii to sell to Matson 22 pedestals (containing electric outlets for refrigerated containers) situated within Container Yard No. 2; the increase of the area of Easement A; the operational readiness of the tank farm facility; the increase of the areas of Easements E, E2 and E4; the increase of the amount of the ground rent; various deletions and additions to the other Easements; and the incorporation of Container Yard No. 6 into the common use area of the lease.

Agreement No.: 217–010651–001.

Title: Sea-Land Service, Inc./Hapag-Lloyd AG Transpacific Reciprocal Space Charter and Sailing Agreement.

Parties:

Sea-Land Service, Inc.

Hapag-Lloyd AG

Synopsis: The proposed amendment would modify the agreement to specify that cargoes subject to U.S. cargo preference laws may not be offered by one party to the other for carriage.

Agreement No. 224–010765.

Title: Oakland and Long Beach Terminal Agreement.

Parties:

The Shipping Corporation of New Zealand, Limited (SCNZ)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: Agreement No. 224-010765 permits SCNZ to obtain terminal services from Sea-Land at Sea-Land's terminal facilities in Oakland and Long Beach, California. Sea-Land will be paid by SCNZ for performing the terminal functions in accordance with charges set forth in the agreement. The terms of the agreement will comment on the day it becomes effective pursuant to the Shipping Act of 1984, and it will run for an initial period of two years from that date. It shall continue without a lapse thereafter from year to year until terminated by either party.

Dated: June 10, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-14284 Filed 6-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Grupo Financiero Popular, S.A., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the office 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 July 6, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Grupo Financiero Popular, S.A.*, Santo Domingo, Dominican Republic; to become a bank holding company by acquiring 48 percent of the voting shares of The Dominican Bank, New York, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers and Merchants Corporation, Inc.*, Forest, Mississippi; to acquire at least 5 percent of the voting shares or assets of First Mississippi National Corporation and First Mississippi National Bank, both located in Hattiesburg, Mississippi.

2. *First National Corporation*, Covington, Louisiana; to acquire 100 percent of the voting shares or assets of CNB Bancshares Corporation and Century Bank of New Orleans, both located in New Orleans, Louisiana.

First National Corporation has also applied to acquire 100 percent of the voting shares or assets of Riverlands National Bank in LaPlace, LaPlace, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Prairie Bankshares, Inc.*, Georgetown, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Georgetown, Georgetown, Illinois.

2. *Old-First National Corporation*, Bluffton, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Old-First National Bank in Bluffton, Bluffton, Indiana.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cosmos Bancorporation, Inc.*, Cosmos, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Cosmos, Cosmos, Minnesota.

Board of Governors of the Federal Reserve System, June 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-14240 Filed 6-12-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement; Delegation of Authority

Notice is hereby given that the Secretary of Health and Human Services delegated to the Director, Office of Child Support Enforcement, pursuant to title IV-D and section 1132 of the Social Security Act, as amended, the authority to waive the two-year period requirement imposed under Section 1132 with respect to the filing of any claim arising under title IV-D of the Act if the Director determines (in accordance with regulations) that there was good cause for the failure by a State of file such claim. The Director may not redelegate this authority.

The delegation affirmed and ratified any actions taken by the Director prior to the effective date of the delegation which in effect involve the exercise of the authority delegated by the Secretary. The delegation became effective on May 13, 1985.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14238 Filed 6-12-85; 8:45 am]

BILLING CODE 4190-11-M

Public Health Service; Saint Elizabeths Hospital and District of Columbia; Mental Health Services Act; Delegation of Authority

Notice is hereby given that on May 13, 1985, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary under the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, Pub. L. 98-621, 98 Stat. 3369, as amended, concerning the mental health services delivery system of the District of Columbia. The delegation to the Assistant Secretary for Health excludes the authority under Section 4(d)(2) to establish a Labor Management Advisory Committee.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14237 Filed 6-12-85; 8:45 am]

BILLING CODE 4160-20-M

Human Development Services; Deficit Reduction Act of 1985—Pub. L. 98-369 and Section 1136 of the Social Security Act; Delegation of Authority

Notice is hereby given that on May 13, 1985, the Secretary of Health and Human Services delegated to the Assistant Secretary for Human Development Services, authority to review and approve applications for the establishment and conduct of pilot projects to demonstrate the use of

integrated service delivery systems for human services programs. Included in this delegation is the authority to review and approve assurances (Section 1136(c)(1) of the Social Security Act, as amended) and to review and approve grantee awards.

Authorities retained by the Secretary are:

1. Authority to approve requests for a waiver of certain legal requirements (Section 1136(d)(1) of the Social Security Act, as amended).

2. Authority to submit periodic progress reports to Congress concerning the current status of each approved pilot project (Section 1136(h) of the Social Security Act, as amended).

This delegation is subject to the reservation of authority to the Security as set forth in Part A, Chapter AA of the Departmental Organization Manual.

Dated: June 5, 1985.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-14239 Filed 6-12-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Honeoye Creek Wetland Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement on the Honeoye Creek Wetland Project in Ontario County, New York is available for public review. Comments and suggestions are requested. The New York Department of Environmental Conservation (DEC) proposes to acquire real property interests to approximately 800 acres of wetlands and a 100 foot buffer around the wetlands, and property now owned by the Nature Conservancy north of the wetlands. Beyond the immediate area of the wetland DEC would acquire sufficient interests in those parcels to give it control over activities which would adequately affect the wetland resource. These lands would be developed as a Wildlife Management Area used for both consumptive and non-consumptive outdoor recreation. DEC will likely use state monies and federal funds (Pittman-Robertson Act) for the acquisition.

DATES: Written comments are requested by August 15, 1985. A public meeting will be held in Avon, New York on July 2, 1985 at 7:00 PM at the Honeoye Central School Auditorium, Honeoye, New York.

ADDRESS: Comments should be addressed to Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158 (617) 965-5100, X382 or Mr. David C. Woodruff, New York DEC, 6274 East Avon-Lima Road, Avon, New York 14414 (716) 226-2466.

Individuals wishing copies of the DEIS should immediately contact either of the above individuals. Copies have been sent to all agencies and organizations who participated in the scoping process. Copies will be available for examination at FWS in Newton Corner, Massachusetts, NYDEC in Avon, New York and at the Town Hall in Richmond, New York.

SUPPLEMENTARY INFORMATION: This environmental impact statement addresses the acquisition and development of the Honeoye Creek wetland project area. It poses five alternative sets of actions, and discusses how each would address the goals of the Department of Environmental Conservation; it relates the pertinent environmental characteristics of the area and it projects how the environment would be affected with the implementation of each of the five alternatives.

The No Action alternative projects the future of the wetland were the Department of Environmental Conservation neither to acquire real property there nor to manage the area. The only protection afforded the wetland would be State and federal environmental laws, such as the New York Freshwater Wetlands Act and the federal Clean Water Act.

Within the project area at the present time, The Nature Conservancy is offering the Department of Environmental Conservatory title to a large parcel of land which covers the northern end of the wetland and beyond. This alternative, known as The Nature Conservancy Alternative involves accepting just this parcel and leaving the remainder of the wetland in private hands.

The Proposed Action Alternative includes: Acquisition of real property interests to approximately 800 acres of wetlands and a 100 foot buffer around the wetlands, property now owned by the Nature Conservancy north of the wetland and sufficient interests in adjacent upland parcels to give DEC sufficient control over activities which would adversely affect the wetland resource. A shallow impoundment would be created in the center of the project area alone. Public access, small parking areas and trails will be created.

An additional alternative involves similar land acquisition to the proposed action but with a smaller impoundment. With this alternative, fewer access points would be constructed. However, the same number of potholes, ponds, and nesting structures and islands would be placed on the site. The uplands would be managed to provide cover and food for wildlife. In addition, DEC would require conservation practices of permit-holders who would farm the slopes adjacent to the wetlands. This alternative is known as the Reduced Impoundment Alternative.

The Wetland Preservation Alternative includes DEC acquiring the wetland proper and a narrow, 100-foot, buffer about its perimeter. DEC could insure that the part of the project area, the most sensitive and valuable part, would be preserved forever. DEC would also develop access and parking areas to allow the public to enjoy the wetland resource. It would create no impoundment, potholes, nor implement other management practices to enhance the marsh environment. Additionally, it would not implement any conservation practices on the uplands.

Howard N. Larsen,

Regional Director.

[FR Doc. 85-14312 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Havre and Great Falls Resource Areas, Montana; Blaine, Hill, Chouteau, Liberty, Toole and Glacier Counties; Call for Coal and Other Resource Information

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Call for coal and other resource information for the West HiLine Resource Management Plan, Lewistown District, Montana.

SUMMARY: As stated in the Notice of Intent published December 6, 1983 (FR, Vol. 48, No. 235, 54723), the Lewistown District has initiated a Resource Management Plan for the public lands in the Havre Resource Area and portions of the Great Falls Resource Area of Montana. The Bureau, in accordance

with 43 CFR 3420.1–2, is formally soliciting indications of interest and information on the coal resource development potential for public lands and minerals in the West HiLine Area (Blaine, Hill, Chouteau, Liberty, Toole and Glacier counties). The BLM will not conduct any coal resource inventory in the planning area. Parties interested in Federal coal leasing and development will be expected to provide coal resource data for their area of interest. The adequacy and timing of the information received will determine the extent that the Federal coal resource and its development potential may be addressed in the RMP/EIS.

This notice also calls for indications of interest and resource information for other resources within planning area. This includes, but is not limited to: oil, gas, gold, wildlife, range and forest products. Identification of definite interests in resource development, substantiated with adequate resource data, at this time will allow addressing resource potentials in this plan and possibly avoid unnecessary work, delays, or near term revisions to the plan. Non-proprietary data and general comments should be submitted to: District Manager, Bureau of Land Management, Lewistown District, Airport Road, Lewistown, MT 59457.

Proprietary data marked as confidential may be submitted only to: Chief, Branch of Solids, Bureau of Land Management, Montana State Office, Box 36800, Billings, MT 59107.

DATES: Industry, state and local governments and the general public are encouraged to submit relevant information at any time during the planning process. However, information about coal and other resources will be most useful in focusing the Bureau's planning efforts if received prior to July 19, 1985.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager at (406) 538–7461 or write to: Lewistown District, Airport Road, Lewistown, Montana 59457.

Dated: June 6, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85–14296 Filed 6–12–85; 8:45 am]

BILLING CODE 4310-DN-M

Closure and Restriction Order; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with the Code of Federal Regulations (43 CFR Part 8364), public lands described as T.41S., R.14W., SLB&M., Sec. 34, Lots 3 and 4; Sec. 35, Lots 5–9, NESW, S2SENW, NWSE, totaling 325 acres are hereby closed to off-road vehicle use. Official vehicles necessary for land management purposes are exempt from this order.

SUMMARY: This closure is necessary to protect the natural environment and prevent excessive erosion until such time as a final recreation plan is effected for the Quail Creek Reservoir Recreation Area. The area described lies generally between Utah State Highway 9 and the Quail Creek Reservoir dike, on either side of the access roads.

DATES: Off-road vehicle use is restricted for a period of 2 years or until such time as the Quail Creek Recreation Area Management Plan becomes effective, whichever first occurs.

ADDRESS: Comments or questions should be directed to the Dixie Resource Area Office, Bureau of Land Management, 224 North Bluff, St. George, Utah 84770.

Dated: June 5, 1985.

Morgan Jensen,

District Manager.

[FR Doc. 85–14294 Filed 6–12–85; 8:45 am]

BILLING CODE 4310-DQ-M

Public Notification of the Area of Critical Environmental Concern, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice that Certain Public Lands in the Bishop Resource Area, Bakersfield District, California Shall Be Managed as an Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to authority in the Federal Land Policy and Management Act of 1976 (Sec. 202(c)(3), 43 CFR Part 1610 and land use decisions developed in the Benton-Owens Valley Management Framework Plan (June 28, 1982), public lands in and around Fish Slough were designated as an Area of Critical Environmental Concern.

SUPPLEMENTARY INFORMATION: Notice of the designation of Fish Slough as an Area of Critical Environmental Concern and the availability of the draft management plan and environmental assessment for public review was published in the **Federal Register** on June 20, 1984. The completion of the final management plan calls for the management of Fish Slough as an Area of Critical Environmental Concern.

Fish Slough is located in Inyo and Mono Counties, in the Owens Valley, approximately seven miles north of Bishop, California. The Fish Slough management plan recognizes a number of significant resource values of the area, including endangered wildlife, sensitive plant species and populations, unique wetlands, significant cultural values, scenic quality, and the opportunity for primitive types of recreation.

The guidelines in the management plan were developed to minimize conflicts between the user public and to protect sensitive natural resources. Restrictions include (1) limiting vehicle use to designated and/or existing roads and trails, (2) constructing a 200-acre livestock exclosure for wildlife habitat protection, and (3) limiting construction activities so as not to detract from the natural landscape characteristics. A cooperative livestock grazing program is proposed as well as the establishment of a monitoring program.

The Area of Critical Environmental Concern designation provides the opportunity to minimize impacts from mineral entry through provisions in 43 CFR Part 3809. Approval of a plan of operations on mining claims is required on any operation, except casual use, prior to commencing operations in an Area of Critical Environmental Concern.

The Fish Slough Area of Critical Environmental Concern applies to the following described public lands:

Mount Diablo Meridian, California

T. 3 S., R. 32 E.,
  Sec. 27, S½;
  Sec. 28, S½;
  Secs. 33 & 34.
T. 4 S., R. 31 E.,
  Sec. 25, S½.
T. 4 S., R. 32 E.,
  Sec. 2, W½;
  Secs. 3, 4, 9, 10, 11, 14, 15, 21, 22, 23;
  Sec. 24, S½;
  Secs. 25 thru 28;
  Sec. 29, E½, SW¼;
  Sec. 30, S½;
  Secs. 31 thru 35.
T. 5 S., R. 32 E.,
  Secs. 1 thru 5;
  Sec. 8, N½, SE¼;
  Secs. 9 thru 12;
  Sec. 13, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
  Secs. 14 & 15;
  Sec. 21, E½;
  Secs. 22 & 23;
  Sec. 24, NW¼, W½SW¼;
  Sec. 25, W½NW¼, SW¼;
  Secs. 26 & 27;
  Sec. 28, NE¼;
  Sec. 34, E½;
  Sec. 35.
T. 5 S., R. 33 E.,
  Secs. 6 & 7;
  Sec. 18, E½, E½W½;
  Sec. 19, E½, E½W½;

Secs. 30 & 31.
T. 6 S., R. 32 E.,
Secs. 1 & 2;
Sec. 11, E½;
Sec. 12, N½, SW¼, N½SE¼, SW¼SE¼.
T. 6 S., R. 33 E.,
Sec. 6, E½, S½SW¼;
Sec. 7, E½, E½W½, SW¼NW¼, W½SW¼.

FOR FURTHER INFORMATION CONTACT: Jim Morrison, Bishop Area Manager, Bureau of Land Management, Bakersfield District, 873 N. Main St., Suite 201, Bishop, CA, 93514; (619) 872-4881.

Dated: June 6, 1985.

James S. Morrison,

Bishop Resource Area Manager.

[FR Doc. 85-14292 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-40-M

Additional Public Hearing; Draft Oregon Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent of Conduct an Additional Public Hearing on the Draft Oregon Wilderness Environmental Impact Statement.

SUMMARY: In addition to the fourteen public hearings identified in the **Federal Register** on April 30, 1985 (50 FR 18321), a public hearing has been scheduled at the following time and location: July 15, 1985, 7:00 p.m. to 10:00 p.m., East Conference Room, Hall of Mirrors, 700 West State Street, Boise, Idaho. A one-hour informal discussion session will precede the hearing.

FOR FURTHER INFORMATION CONTACT: Jerry Magee (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, Telephone (503) 231-6867.

Dated: June 5, 1985.

Paul M. Vetterick,

Acting State Director.

[FR Doc. 85-14293 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-33-M

[CA 17208]

Geothermal Resources Lease Sale; Coso, Dunes, East Brawley, Glamis, Geysers, Lake City Surprise Valley, and Salton Sea KGRA's

Notice is hereby given that the geothermal lease sale scheduled for June 25, 1985, has been rescheduled and will be held July 17, 1985. Approximately 98,345.35 acres of land in 53 parcels within the Coso (23,271.83 acres), Dunes (3,280.47 acres), East Brawley (7,253.52 acres), Glamis (10,954.04 acres), Geysers (28,560.05 acres), Lake City Surprise Valley (13,823.52 acres), and Salton Sea (11,201.92 arces) KGRA's in Inyo, Imperial, Lake, Modoc, Mandocino, Napa, and Sonoma Counties, California, will be offered competitively for lease under the Geothermal Stram Act of 1970 through sealed bids to the qualified responsible bidder of the highest cash amount per parcel. Royalties payable to the United States will be at the rate of 12½% for the parcels within the Geysers KGRA and 10% for all the other parcels. The annual rental for the first through the fifth lease year will be at the rate of $2.00 per acre. For the sixth lease year and for each year thereafter prior to production, the rental will be in accordance with 43 CFR 3203.5. Bids will be received until 10:00 a.m. on July 17, 1985.

For further information contact the California State Office, Division of Operations, Room E-2605, 2800 Cottage Way, Sacramento, California. Phone (916) 484-4492.

Dated: June 5, 1985

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-14298 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-84-M

Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Safford District Advisory Council.

DATE: Friday, July 19, 1985, 10:00 a.m.

ADDRESS: 425 E. 4th Street, Safford, Arizona.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held Friday, July 19, 1985 in Safford, Arizona at 10:00 a.m. at the Safford District Office, 425 E. 4th Street, Safford, Arizona.

Agenda for Meeting

1. BLM-State Land Exchange Progress.
2. BLM/Forest Service Interchange.
3. Gila Box Coordinated Resource Management Plan.
4. Issue Identification for Aravaipa Canyon Wilderness Management Plan.
5. Management Update.
6. Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the District Manager at the above address by July 18, 1985. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (within regular business hours) within 30 days following the meeting.

Dated: June 6, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-14295 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-32-M

Public Comment Period and Public Meetings, Owyhee Wild River Management Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that a public comment period on the draft Owyhee Wild River Management Plan will be held June 28 through July 29.

Public meetings to discuss the draft Owyhee Wild River Management Plan will be held: (1) July 8 in Portland, Oregon, beginning at 7:00 P.M. in the conference room of the Viscount Hotel, 1441 Northeast Second Avenue, (2) July 10 in Jordan Valley, Oregon, beginning at 7:00 P.M. at the Jordan Valley Lions Den, and (3) July 11 in Boise, Idaho, beginning at 7:00 P.M. in the first floor conference of the Boise BLM District Office, 3948 Development Avenue.

FOR FURTHER INFORMATION CONTACT: Copies of the draft Owyhee River Management Plan and additional information regarding the public meetings may be obtained by contacting Barry Rose, Vale BLM District, P.O. Box 700, Vale, Oregon 97918, (503) 473-3144.

Fearl M. Parker,

District Manager.

[FR Doc. 85-14297 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-33-M

[A-19079]

Arizona; Order Providing for Opening of Public Lands

June 3, 1985.

1. In a donation of land made under the provisions of section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), the

following land has been reconveyed to the United States:

T. 6 S., R. 11 W., GSR Mer., Arizona
Sec. 7, S½NE¼, SE¼NW¼, W½SE¼, NE¼SE¼, NW¼SE¼SE¼.

The area described contains 250 acres in Yuma County.

2. At 9:00 a.m. on July 15, 1985, the land described in paragraph 1 will be opened to applications and offers under the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications and offers received prior to 9:00 a.m. on July 15, 1985 will be considered as simultaneously filed as of that date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

3. The above-described land will remain closed to all other forms of appropriation.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–14299 Filed 6–12–85; 8:45 am]

BILLING CODE 4310-32-M

[N-38198]

Realty Action; Non-Competitive Sale, Public Lands in Eureka County, NV

The following lands have been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Mount Diablo Meridian

T. 33 N., R. 51 E.,
Sec. 2, Lots 11 and 12, SW¼NW¼NE¼, NW¼SW¼NE¼, N½SW¼SW¼NE¼.

The above-described land comprising 34.67 acres will be offered as a direct sale to the Carlin Gold Mining Co. The lands were omitted from a sale of surrounding lands conducted in 1984 comprising 1,614.43 acres to allow excavation and mitigation of a significant archeological site at the James Creek Rock Shelter. The required actions concerning this mitigation as established in the land report/environmental assessment, have now been completed and the parcel is suitable for disposal. Disposal of the lands to Carlin Gold will allow expansion and development of the Gold Quarry Mine and Mill which is adjacent to their existing mining activities.

The sale of this remaining parcel will permit completion of the Carlin Gold Mine and Mill which will provide jobs and boost the economy of the surrounding area; therefore, the sale can be considered as having high public importance. Speculative bidding could jeopardize the project's timely completion and economic viability. In addition, substantial investment by Carlin Gold has already been made on the subject lands under the authority of the Mining Law of 1872 and the regulations contained in the 43 CFR Part 3809. Sale to another entity other than Carlin Gold could prove detrimental to their existing operation as well as their planned expansion and development of the Gold Quarry Mine and Mill.

The sale is consistent with the land use plan for the area in which the lands are located. The lands are not needed for any resource program and are not suitable for management by another Federal department or agency. The proposal has been reviewed and approved by the Eureka County Planning Commission.

The locatable and salable mineral estates have only nominal value and will be conveyed to the purchaser upon remittance of a $50.00 filing fee.

The purchaser agrees to take the land subject to the existing grazing use of Melvin Jones, holder of grazing authorization No. A084273. The rights of Melvin Jones to graze domestic livestock on the land shall cease on June 27, 1985. Upon conveyance of the lands, the purchaser will be entitled to receive grazing fees for the lands from Melvin Jones in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas and geothermal resources will be reserved to the United States.

And will be subject to:

1. Those rights granted by oil and gas lease N–35628, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of the said leases, and any authorized extension of those leases. Upon termination or relinquishment of said oil and gas leases, this reservation shall terminate.

Detailed information concerning the sale is available for review at the Elko District Office, Bureau of Land Management, 2002 Idaho Street, Elko, Nevada 89801. For a period of 45 days from the date of publication in the **Federal Register,** interested parties may submit comments to the District Manager at P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. If no action is taken by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 7, 1985.

Rodney Harris,

District Manager.

[FR Doc. 85–14306 Filed 6–12–85; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

Carson Hill Mine, Calaveras County, CA; Intent To Prepare a Joint Environmental Impact Report—Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), and Section 21002 of the California Environmental Qualify Act, the Bureau of Reclamation, Department of the Interior, and Calaveras County, California, intend to prepare a joint Environmental Impact Report—Environmental Impact Statement (EIR–EIS). The EIR–EIS will address the impacts of the gold ore processing in leach ponds and use of Bureau of Reclamation water for processing. Alternative sources of water and leach pond locations will be analyzed in the joint EIR–EIS.

Physical failure of the proposed gold ore processing project could affect New Melones Reservior. Accordingly, the objectives and requirements of Presidential Executive Orders 11988 and 11990, and the Reclamation Instructions, Chapter 376.5, will be considered throughout the planning and preparation of the EIR–EIS. As a joint document, the

EIR–EIS will meet the requirements of both the National Environmental Policy Act and the California Environmental Quality Act.

A joint public meeting has been scheduled for 7:00 p.m. on June 20, 1985, in the Calaveras County Supervisor's Chambers, Government Center, 891 Mountain Ranch Road, San Andreas, California.

The Calaveras County contact for the EIR–EIS will be Eric Toll, Calaveras County Planning Department, Government Center, San Andreas, California 95249, Telephone (209) 754–3841.

The Federal contact person will be Joel Verner, Environmental Specialist, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4328.

Dated: June 11, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85–14376 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–09–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Conoco Inc.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1898, Block 148 (portion), South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted of June 5, 1985.

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: 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) 838–0875.

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: June 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–14311 Filed 6–12–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Flathead River; Water Quality and Quantity Report

The International Joint Commission formally announces that it has been requested by the Governments of the United States and Canada, pursuant to Article IX of the Boundary Waters Treaty of 1909, to examine into and report upon the water quality and quantity of the Flathead River, relating to the transboundary water quality and quantity implications of the proposed coal mine development on Cabin Creek in British Columbia near its confluence with the Flathead River.

The Commission is to make recommendations which would assist Governments in ensuring that the provisions of Article IV of the said Treaty are honored. Article IV provides that the "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Governments noted that on February 21, 1984, the Government of British Columbia announced that approval-in-principle had been granted to Sage Creek Limited for the proposed coal mine, thereby allowing the company to proceed with securing licenses, permits and final approvals under the provincial coal development review process. In granting this approval, the British Columbia Government acknowledged that the approval-in-principle is subject to action taken by federal authorities pursuant to their international obligations under the Boundary Waters Treaty.

In light of the above, the Governments requested that the Commission examine into and report upon the following matters regarding the Flathead River basin:

1. The present state of water quality and quantity at the border (including fluctuations) and the current water uses (including water dependent uses such as recreation) in the Flathead River basin;

2. The nature, location and significance of fisheries currently dependent on the waters of the Flathead River and its tributaries, Howell and Cabin Creek;

3. The effects on present water quality and quantity at the border and consequent effects on current water uses (including water dependent uses such as recreation) which would result from the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine; and

4. Such other matters as the Commission may deem appropriate and relevant to water quality and quantity at the border (including downstream effects in the United States) as occasioned by the proposed Cabin Creek coal mine.

Dated: June 10, 1985.

David A. LaRoche,

Secretary, U.S. Section, IJC.

These terms of reference were communicated to the Commission by letter from the U.S. Government dated December 19, 1984 and a similar letter from the Canadian Government dated February 15, 1985.

In accordance with its responsibilities under the reference, the Commission will conduct public hearings at the times and places noted below. Anyone, on his own behalf or in a representative capacity, may offer pertinent information to assist the Commission. Time may be limited so oral statements should not exceed 10 minutes. A longer statement may be submitted in writing for the record. If possible, 20 copies of each statement should be provided for distribution to the news media and for Commission purposes. The Commission encourages any interested parties who are not able to attend to send written comments to the Secretaries at the addresses below.

The Commission has established an international board to conduct the necessary technical investigations. The board has prepared a plan of study that will be finalized and approved by the Commission following the public hearings. Copies of the complete text of the reference from Governments, the Commission's directive to the board, and the board's plan of study are

available upon request to the Secretaries at the addresses below.

Tuesday, July 9, 1985
2:00 pm and 7:00 pm (local time)
Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana

Wednesday, July 10, 1985
7:00 pm (local time)
Fernie Community Center, Fernie, British Columbia

Thursday, July 11, 1985
10:00 am (local time)
Fernie Community Center, Fernie, British Columbia

David A. LaRoche, Secretary, United States Section, International Joint Commission, 2001 S St., NW., Second Floor, Washington, D.C. 20440
David G. Chance, Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1

[FR Doc. 85-14228 Filed 6-12-85; 8:45 am]
BILLING CODE 4710-14-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-266 Through 268 (Preliminary)]

Certain Steel Wire Nails From the People's Republic of China, Poland, and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation Nos. 731-TA-266 through 268 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China, Poland, and Yugoslavia of one-piece steel wire nails made of round steel wire, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS), and similar steel nails of one-piece construction whether over or under 0.065 inch in diameter, provided for in item 646.30, two-piece steel wire nails, provided for in item 646.32 of the TSUS, and steel wire nails with lead heads, provided for in item 646.36 of the TSUS, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by July 22, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 5, 1985 by Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Davis-Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Nail Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Fabric Co., and Wire Products Co.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to an investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on June 26, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Abigail Eltzroth (202-523-0289) not later than June 24, 1985 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 28, 1985 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

All business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-13758 Filed 6-12-85; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Coal Rate Guidelines; Meeting

Time and Date: 9:30 a.m., Thursday, June 20, 1985.

Place: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, D.C. 20423.

Status: Open Special Conference.

Matter to be discussed: Ex Parte 347 (Sub-No. 1), Coal Rate Guidelines—Nationwide.

Contact person for more information: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 85-13897 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-265X)]

Burlington Northern Railroad Co.; Abandonment in Red Lake and Pennington Counties, MN; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.60-mile line of railroad between milepost 1.20 near Red Lake Falls and milepost 11.80 near St. Hilaire.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, 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 behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, 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: June 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13898 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-52 (Sub-39X); AB-233 (Sub-1X)]

Fresno Interurban Railway Co. and Atchison, Topeka and Santa Fe Railway Co.; Abandonment and Discontinuance of Service in Fresno County, CA; Exemption

Applicants have filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon and discontinue service over the 10.9-mile line of railroad between milepost 6.0 near Cameo and milepost 16.9 near Belmont Avenue in Fresno County, CA.

Applicants certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, 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 behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 15, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, 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.[1]

Decided: June 4, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-14229 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No AB-251X]

Louisiana Midland Railway Co.; Abandonment in Concordia, Catahoula, La Salle, and Grant Parishes, LA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 65.95-mile line of railroad between milepost 1.75 West of Ferriday and milepost 67.70 Packton, LA.

Applicant 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 behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] A request by Fresno County for a public use condition will be disposed of as a petition for reconsideration.

A copy of any petition filed with the Commission should be sent to applicant's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditional upon environmental or public use conditions.

Decided: June 4, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13759 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Decision—Notice OP3-MCF-299]

Motor Carriers; Julius Eiser et al.; Applications Filed

Decided: June 7, 1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register and I.C.C. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification requried.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exeception of those applications involving impediment (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protest as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC-F-16347, filed May 10, 1985. Julius Eisen, et al.—Continuance in Control—GL Bus Lines, Inc. (GL) (262 Monitor Street, Brooklyn, NY 11201) and Gray Line New York Tours, Inc. (Gray Line) (254 West 54th Street, New York, NY 10019). Representative: Michael J. Marzano, 99 Kinderkamack Road, Westwood, NJ 07675. Julius Eisen, Barnett Rukin, Irwin Flateman, and Eleanor Rukin seek authority to continue in control of Gray Line and GL, upon issuance of initial permanent motor common carrier authority to Gray Line in pending applications No. MC-180229 and Sub-No. 1 and to GL in No. MC-180074. The Commission has granted Gray Lines' lead and Sub-No. 1 applications and GL's lead application, subject to common control conditions. In No. MC-180229, Gray Line seeks authority to transport passengers, over irregular routes, in charter and special operations, between points in all States except Hawaii; the Sub-No. 1 seeks regular-route passenger rights. GL seeks authority identical to that in Gray Lines' lead request.

Petitioners also control through stock ownership noncarrier Short Line Terminal Agency, Inc. (Short Line), Limousine Rental Service, Inc. (LRS) (MC-115456), Chenango Valley Bus Lines, Inc. (Chenango Valley) (MC-141324), Colonial Coach Corp. (Colonial) (MC-39491 and MC-142799), Hudson Transit Corporation (HTC) (MC-133403), Hudson Transit Lines, Inc. (HTL) (MC-228), and International Bus Services, Inc. (International) (MC-155937). Common control of Chenango Valley, Colonial, HTC, HTL, International, and LRS has been approved by the Commission. All of the individual petitioners here are related by blood or marriage.

LRS owns 100 percent of the stock of Chenango Valley as well as 100 percent of GL's stock. Colonial's stockholders are Irwin Flateman, Barnett Rukin, Julius Eisen, and Susan Eisen. HTC's stockholders are Short Line, Donna Rukin, Julius and Susan Eisen trustees for Joshua, Andrew, and Cara Gail Eisen, Barnett Rukin custodian for William A. Rukin, Joshua Eisen, Andrew Eisen, and Julius Eisen. HTL's stockholders are Short Line, HTC, Julius Eisen, Barnett Rukin, Susan Eisen, Julius and Susan Eisen trustees for Joshua and Andrew Eisen, Barnett Rukin custodian for William A. Rukin, Joshua Eisen, Andrew Eisen, and YM-YWHA of Bergen County. International's stockholders are Irwin Flateman, Julius Eisen, Eleanore Rukin, and Barnett Rukin. LRS' stockholders are Irwin Flateman, Barnett Rukin, Eleanore Rukin, Susan Eisen, Julius Eisen, and Donna Lynn Rukin. Short Lines's stockholders are Irwin Flateman, Barnett Rukin, Julius Eisen, Susan Eisen, Donna Rukin, Julius Eisen custodian for Cara Gail Eisen, Donna Rukin custodian for Emily Rukin and William A. Rukin, Joshua Eisen, Andrew Eisen, Julius Eisen trustee for Joshua and Andrew Eisen, YM-YWHA of Bergen County, and The Dover Fund. Gray Line's stockholders are Julius Eisen, Irwin Flatemax, Barnett Rukin, Bernard Flateman, and Charles Flateman.

[FR Doc. 85-14230 Filed 6-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-135)[1]]

Seaboard System Railroad, Inc.; Abandonment in Shelby County, TN; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 12.9 mile line of railroad between the Shell Plant (milepost 210.7) and Memphis, TN (milepost 23.6) in Shelby County, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 14353 Filed 6–12–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-40X)]

Railroads; the Atchison, Topeka & Santa Fe Railway Co.; Discontinuance of Trackage Rights; Over Burlington Northern Railway Co.; Exemption

The Atchison, Topeka and Santa Fe Railway company (Santa Fe) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue trackage rights over a Burlington Northern Railroad Company line extending from a point near Franklin and Water Streets to Iowa Junction, a distance of 2.9 miles, all in the City of Peoria, IL.

Santa Fe has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by June 24, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 3, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, 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: June 10, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–14432 Filed 6–12–85; 12:00 pm]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

June 6, 1985.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on July 26, 1985.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to the first drafting of the Agency's 1987 budget to be submitted to the Office of Management and Budget.

The meeting will begin at 10:00 a.m. and will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., 1st Floor Conference Room (M–09), Washington, D.C. The meeting will be closed to the public pursuant to subsection (9)(B) of section 552b of Title 5, United States Code, because the Council will consider information that may disclose information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call area code (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–14231 Filed 6–12–85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421

OMB Desk Officer: Carlos Tellez, (202) 395–7340

Title: Survey of Biotechnology R&D Performance in Industry

Affected Public: Industry

Number of Responses: 150 responses; total of 300 burden hours.

Abstract: Quantitative information on science and technology (S&T) employment and funding in biotechnology related areas is needed to improve the capacity of the Federal Government to assess programs in these areas. NSF, OMB, OSTP, & Congress use the response of business leaders in companies with large biotechnology R&D programs to make timely decisions on S&T policy questions.

Dated: June 10, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85–14247 Filed 6–12–85; 8:45 am]

BILLING CODE 7555-01-M

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[1] This notice was inadvertently published at 50 FR 24328, June 10, 1985, in advance of the service of the Commission's decision. The allotted 10 day period should be calculated instead from this current publication.

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Recommendations: Amtrak, et al.; Availability

NATIONAL TRANSPORTATION SAFETY BOARD—SAFETY RECOMMENDATIONS ISSUED

Recommendation No.	Issued to	Date	Subject
Railroad			
R-85-13 and -14	Amtrak	Mar. 30, 1985	Interior design deficiencies of passenger cars and review of current quality control procedures.
R-85-15 and -16	Assn. of American Railroads	Mar. 20, 1985	Maintenance and design of traction motor support bearings.
R-85-17	General Motors Corp	do	Do.
R-85-18	General Electric Co	do	Do.
R-85-19 and -20	Consolidated Rail Corp	do	Absent or inoperative cab signals on trains.
R-85-21	Assn. of American Railroads	do	Provision for a second qualified locomotive operator while train is in service or between terminals.
R-85-2	Brotherhood of Locomotive Engineers	do	Do.
R-85-23	United Trans. Union	do	Do.
R-85-24	Railway Labor Executives' Association	do	Do.
R-85-25 thru -34	NY City Transit Authority	Mar. 28, 1985	Improvement of subway tunnel safety.
R-85-35	NY State Depart. of Transportation	do	Implementation of previous safety rec's made concerning subway fires.
R-85-36	New York Fire Dept	do	Improvement of communication with NYCTA; development of adequate maps of subway; third rail power safety.
R-85-37 thru -42	Burlington Northern R.R. Co	Apr. 24, 1985	Nighttime supervision of train operators, uniform interpretation of Rule G, information provision, training programs, crew alerters.
R-85-51	Federal Railroad Admin	May 16, 1985	Requirement that two crewmembers qualified to operate train be on locomotives of through trains.
R-85-52	Brotherhood of Locomotive Engineers/United Trans. Union/Assn. of American Railroads.	do	Do.
R-85-59 and -60	Federal Railroad Admin	May 17, 1985	Tank car anti-shift brackets.
Marine			
M-85-25	Nat'l Oceanic & Atmospheric Administration	Apr. 1 1985	Navigation guides for mariners navigating Western Rivers.
M-85-26	U.S. Army Corps of Engineers	do	Supplemental large scale charts for harbor areas and areas difficult to navigate in next edition of Upper Mississippi River Navigation Charts.
M-85-18 thru -24	U.S. Coast Guard	do	Difficult navigation; shore lighting, Popular Street Bridge, St. Louis Harbor.
M-85-27	Findett Transport Co	do	Establishment of records to ensure that operators of towing vessels have sufficient experience and local knowledge.
M-85-28	American Waterways Operators	do	Experience and local knowledge of towing vessel operators.
Highway			
H-85-1 thru -3	CA Yearly Mtg. of Friends	Mar. 20, 1985	Church—sponsored trips; itineraries, systematic maintenance programs.
H-85-4 thru -6	State Directors of Pupil Transportation/Governors of 50 States & DC.	Mar. 22, 1985	Schoolbus driver compliance with railroad crossing stop requirements; driver stress.
Pipeline			
A-85-4 and -5	Washington Gas Light Co	Apr. 19, 1985	Temporary bonding cables; installation during pipe cutting operations.
Aviation			
A-85-5 and -6	Federal Aviation Admin	May 14, 1985	Pratt & Whitney JT9D series engines.
A-85-26 and -27	do	Apr. 15, 1985	Windshear training program; cockpit resource management training.
A-85-28 thru -30	do	do	Eastern Aero Marine Model GA-12 flotation devices.
A-85-31	do	May 6, 1985	Attachment of intercoastals of wing extension assemblies to wing rib structure at wing station 195 on Model PA-60-611B, -601P, and -602P Piper Aerostar airplanes.
Intermodal			
I-85-2 thru -4	Harris Corporation	May 16, 1985	Hazardous waste shipping procedures.
I-85-5 and -6	Chemical Waste Management	do	Transportation of hazardous wastes.
I-85-7 and -8	Department of Transportation	do	Shippers of hazardous waste; responsibilities and audits of; compliance with the Hazardous Materials Transportation Act.
I-85-9	Environmental Protection Agency	do	Shipper responsibilities under the Hazardous Materials Transportation Act.
I-85-10 and -11	Research and Special Programs Administration.	do	Shipping of hazardous materials; adequacy of general shipping names and shipper responsibilities.
I-85-12	Nat'l Tank Truck Carriers	do	Instructions to drivers regarding hazardous waste transportation and proper loading procedures.
I-85-13 and -14	U.S. Dept. of Transportation	Apr. 19, 1985	Evacuation distances for rail tank cars carrying liquids or gases.
I-85-15	Internat'l Society of Fire Service Instructors/ Internat'l Assn. of Fire Chiefs/Internat'l Assn. of Chiefs of Police.	do	Do.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer.

May 22, 1985.

[FR Doc. 85-14307 Filed 6-12-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

Florida Power Corp. et al; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission [the Commission] is

considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant located in Citrus County, Florida.

In accordance with the licensee's application dated April 25, 1985, the proposed amendment would revise the Technical Specifications (TSs) to support the operation of Crystal River Unit 3 at full rated power during the upcoming Cycle 6 operation. The proposed amendment requests changes in the following areas:

1. Reactor core safety limits and trip setpoints for reactor thermal power and axial power imbalance.
2. Minimum boric acid and borated water volumes.
3. Regulating and axial power shaping rod group insertion limits.
4. Axial power imbalance limits.
5. Reactor Protection System response time tesing requirements.
6. Deletion of specific requirements pertaining to Cycle 5.

In support of the license amendment request for operation of Crystal River Unit 3 during Cycle 6, the licensee submitted, as an attachment to the application, a Babcock & Wilcox (B&W) Report, BAW-1860, dated April 1985. A summary of the Cycle 6 operating parameters along with a safety analysis are included therein.

For Cycle 6, Crystal River Unit 3 will operate with 60 fresh fuel assemblies similar to the fuel used in Cycle 5. Additionally, Cycle 6 will incorporate longer less absorbing Inconel (gray) axial power shaping rods (APSRs) instead of silver-indium-cadmium (black) APSRs used previously.

The NOODLE code was used in determining core physics parameters and the LYNX-T code, which uses crossflow methods, in the thermal-hydraulic analyses. Other analytical methods have been used and accepted for previous cores.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of types of amendments not likely to involve significant hazards considerations is (iii), a change resulting from a nuclear core reloading if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved, assuming that no significant changes are made to the acceptance criteria for the TSs, that the analytical methods used to demonstrate conformance with the TSs and regulations ar not significantly changed, and that the NRC has previously found such methods acceptable.

This reload involves the Mark B fuel assembly previously accepted by the NRC. As of October 31, 1984, it has been used for eight B&W 177-fuel assembly plants and has proven adequate.

The Cycle 6 control rods differ from those in Cycle 5 in that grey APSRs are to be used instead of the previously used black APSRs. The grey APSRs were designed to improve creep life and have previously been approved by the Commission for use in similar reactors.

Thus, this core reload involves fuel assemblies and control rods that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The request for this amendment would change the TSs to reflect new operating limits based on the fuel and control rods to be inserted into the core. The parameters are based on the new core physics and fall within acceptable criteria.

In the analysis supporting this reload, there are no significant changes in acceptance criteria for the TSs.

Two changes were made in the analytical methods used and accepted for previous cores to demonstrate conformance with TSs and regulations. The NOODLE code was used to calculate reactor physics parameters. The licensee has compared the NOODLE code results with the previously used PDQ07 code results and found them to be as accurate. The NOODLE code had been previously reviewed and found acceptable by the Commission.

The licensee provided additional information regarding use of the LYNX-T code (which uses crossflow methodology) at a meeting on May 17, 1985. It was stated that LYNX-T was used for steady-state conditions only and that the previously approved RADAR code was used for transient analysis. It was shown that LYNX-T produces results equivalent to the TEMP code used for the previous cycle at this facility. The LYNX-T code is under review by the NRC staff and has not yet been formally approved, but its use for steady-state conditions has been found acceptable. Crossflow methodology has been utilized in the licensing of other B&W reload cores.

Based on the above, the reload and the proposed license amendment reflecting it appear to be encompassed by example (iii), and the Commission's staff proposes to determine that these proposed changes do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

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 petitions and/or requests, that the petitioner has made a substantial showing of good cause for the granting of a late petitions and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Crystal River-Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 7th day of June 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 85–14285 Filed 6–12–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- River assessment study.
- Anadromous fish section—Hydro Assessment Study.
- Tribal values study.
- FERC update.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: June 18, 1985. 10:00 a.m.

ADDRESS: The meeting will be held at the Ramada Airport Inn, Empire Room, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–14303 Filed 6–12–85; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

Postal Visits; California

June 7, 1985.

Notice is hereby given that Commissioner Bonnie Guiton will visit the following postal facilities, on the dates and time shown, to observe mailing operations:

San Francisco Bulk Mail Center, Richmond, California, on June 11, 1985, at 9:30 a.m.

Main Post Office Facility, Management Sectional Center, Oakland, California, on June 11, 1985, at 1:00 p.m.

General Mail Facility, Management Sectional Center, San Francisco, California, on June 12, 1985, at 10:00 a.m.

A report of the visits will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 85-14224 Filed 6-12-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22122; SR-MSRB-85-12]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1985, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule A-13 (hereinafter sometimes referred to as the "proposed rule changes"). The text of the proposed rule changes is as follows:[1]

Rule A-13. Underwriting Assessment for Municipal Securities Brokers and Municipal Securities Dealers

(a) In addition to the fees prescribed by other rules of the Board, each municipal securities broker and municipal securities dealer shall pay a fee to the Board equal to [.001% [$.01 per $1,000)] *.002%) $.02 per $1,000)* of the par value of all municipal securities which are purchased from an issuer by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of $1,000,000 or more and which has a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, such fee shall be calculated on the basis of the participation of such municipal securities broker or municipal securities dealer in the syndicate or similar account. Such fee must be received at the office of the Board in Washington, D.C. not later than 30 calendar days following the date of settlement with the issuer. In the event a syndicate or similar account has been formed for the purchase of the securities, the fee shall be paid by the managing underwriter on behalf of each participant in the syndicate or similar account.

(b)-)c) No change.

(d) The fee prescribed in paragraph (a) shall be payable with respect to any new issue municipal security which a municipal securities broker or municipal securities dealer shall have contracted on or after [October 1, 1982] *July 1, 1985* to purchase from an issuer.

(e) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rule A-13 requires each municipal securities dealer to pay to the Board a fee based on its placements of new issue municipal securities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities.

Municipal securities dealers are required to pay the underwriting assessment fee on all new issues purchased by or through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. Prior to the proposed rule changes, the fee was calculated at the rate of $.01 per $1,000 of the par value of such securities. The proposed rule changes modify rule A-13 to provide that the fee payable with respect to new issues which a municipal securities dealer has contracted on or after July 1, 1985, to purchase from an issuer shall be calculated at the rate of $.02 per $1,000.

The Board has not changed the underwriting assessment fee rate since the rate was decreased from $.02 to $.01 per $1,000 on October 1, 1982; however, in light of the Board's declining fund balance and a projected decline in new issue volume, it has adopted an amendment to rule A-13 increasing the underwriting assessment fee rate from $.01 to $.02 per $1,000, effective July 1, 1985. Based on projections of the Board's revenues and expenses, raising the fee on July 1, 1985, should maintain the reserves at a level which should compensate for a significant decline in new issue volume and avoid increasing the underwriting assessment fee further.

(b) The Board has adopted the proposed rule changes pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will have any impact on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Comments have not been solicited or received on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

[1] Italics indicate new language; brackets indicate deletions.

the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1985.

Dated: June 6, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-14290 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22124; File No. SR-NASD-85-14]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers Relating to a New Section 66 to the Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new Section to its Uniform Practice Code which would set a time by which syndicate accounts must be closed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to add a new section to its Uniform Practice Code which would require syndicate accounts to be closed out within 120 days after the syndicate settlement date. Syndicate accounts are ordinarily formed by underwriting groups to process the income and expenses of the syndicate. An informal study by the NASD of syndicate settlement practices revealed lengthly settlement delays were a common occurrance. NASD members have commented there is no reason why the syndicate account should not be closed within 120 days and several members expressed a view that 90 days would be adequate to accomplish this. It is because of these lengthy and often costly delays that the NASD is proposing this new section.

These changes are consistent with Section 15A(b)(6) of the Securities Exchange Act, which requires that the Association's rules promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden On Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited and eight NASD members and the Municipal Securities Rulemaking Board responded. All comment letters received from NASD members strongly supported the NASD proposal.

Six of the eight NASD members who commented stated they believe the 120 day settlement period could easily be reduced to 90 days without any undue burden on syndicate managers. The Municipal Securities Rulemaking Board commented that under its rules syndicate account settlements must occur within 60 days.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450—5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

June 6, 1985.

[FR Doc. 85-14288 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22123; SR-OCC-85-2]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Approving Proposed Rule Change

The Options Clearing Corporation ("OCC") on February 15, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of

the Securities Exchange Act of 1934. The proposal would enable foreign broker-dealers to qualify for OCC membership.[1] On March 15, 1985, the Commission published notice of the proposal in the **Federal Register** to solicit public comment.[2] No comment has been received. For reasons discussed below, the Commission is approving OCC's proposal.

Introduction

Currently, foreign broker-dealers participate in the domestic options markets indirectly, through OCC's Clearing Members.[3] Some Clearing Members maintain offices overseas to facilitate foreign broker-dealer business. Typically, a foreign broker-dealer arranges with an OCC Clearing Member to execute trades on the U.S. options exchanges, to clear and maintain U.S. market positions and to perform certain back-office functions. The OCC Clearing Member undertakes the responsibility for all overseas communications and for meeting OCC margin and clearing fund deposits. For these services, foreign broker-dealers pay domestic Clearing Members commissions and other costs and expenses.

To reduce those expenses, some foreign broker-dealers have sought direct OCC membership. Those firms plan not to seek membership in, or a physical presence on the floor of, any domestic options exchange; they will continue to use domestic broker-dealers to execute orders. The foreign firms, however, intend to conduct their own options clearance and settlement operations through OCC after OCC assigns the trades to their accounts through use of OCC's Clearing Member Trade Assignment ("CMTA") Procedure.[4]

The Proposed By-Law and Rule Changes

OCC proposes to change its By-Laws to make a "Foreign Securities Firm"[5] eligible to become an OCC "Foreign Clearing Member" ("FCM").[6] OCC's definition of "Foreign Securities Firm" limits the universe of potential FCMs to firms that are subject in its home country to some governmental, self-regulatory, or other independent regulatory authority under governmental oversight. OCC believes that the existence of some regulatory authority over the Foreign Securities Firm in its home nation should provide some assurance that an applicant is subject to financial and operational discipline. OCC also believes that this should aid OCC's surveillance and crisis management of an FCM experiencing financial or operational difficulties.[7]

OCC's definition also excludes Foreign Securities Firms that are required to register as U.S. broker-dealers under the Act.[8] Such firms already are eligible to be domestic Clearing Members and must meet the same requirements as other domestic OCC Clearing Members. Generally, the proposal would enable Foreign Securities Firms doing business only with foreign customers, *i.e.*, firms that are not required to register as broker-dealers under the Act, to become OCC Clearing Members even though they are engaged in options transactions that are executed through U.S. broker-dealers on U.S. options exchanges.

Financial Requirements

OCC, in general, is imposing the same financial requirements for admission and continuing participation on FCMs that it currently imposes on domestic Clearing Members. As proposed, Article V of OCC's By-Laws, which relates to Clearing Member qualifications and conditions to admission, expressly provides for such equal treatment with a few minor modifications. OCC's Interpretations and Policies concerning operational capability would be modified only insofar as they would permit a foreign firm to maintain its books and records in a manner or format different from domestic Clearing Member applicants. However, a foreign firm's books and records, regardless of format, would be required to reflect accurately the firm's net capital, aggregate indebtedness, and debt-equity total, as defined and computed in accordance with Commission Rule 15c3-1 (17 CFR 240.15c3-1). Any foreign firm not maintaining its records to reflect accurately those amounts in accordance with Rule 15c3-1 could not qualify to become or remain a Foreign Clearing Member. In addition, FCMs would be subject to section 3(g) of Article V of OCC's By-Law, which provides that each OCC Clearing Member must agree to permit OCC's inspection of the Clearing Member's books and records at all times to furnish OCC with any information relating to the Clearing Member's business and transactions required by OCC or its officers.[9]

FCMs, like domestic Clearing Members, will be required by OCC Rule 306 to report financial information to OCC by filing FOCUS reports with OCC. If OCC determines from these reports that an FCM is not in compliance with Rule 15c3-1, OCC can suspend the FCM or restrict its transactions or positions under OCC Rule 305. Moreover, FCMs will be required to file annually under OCC Rule 308 financial statements audited by an independent public accountant that is satisfactory to OCC.

Furthermore, OCC Rule 310 would be amended to require that all FCM financial reports, *e.g.*, FOCUS reports and audited financial statements, conform in all respects to U.S. accounting practices and standards, *e.g.*, Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, and Commission accounting and financial reporting requirements. If an FCM fails to comply with these provisions, OCC could: (1) Impose any sanctions or restrictions available under its By-laws and Rules, including suspension from membership under Chapter XI of OCC's Rules, variation margin under OCC Rule 609 and business restrictions under OCC

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[1] Several foreign firms, all of which are English or Canadian broker-dealers, have expressed interest in becoming OCC Clearing Members.

[2] 50 FR 10589 (March 15, 1985).

[3] Under OCC's current rule, only a "person registered as a broker-dealer under the Securities Act of 1934, as amended," is eligible to be an OCC Clearing Member.

[4] The CMTA Procedure enables an OCC Clearing Member, with OCC's approval, to authorize another Clearing Member (an "authorized Exchange member") to execute and compare trades on the first Clearing Member's behalf upon notification to OCC. Under the CMTA Procedure, the Foreign Clearing Member will clear those trades through its own OCC clearing account and will be responsible for satisfying all settlement and margin requirements arising from such transactions.

[5] OCC defines a "Foreign Securities Firm" as a securities firm: (1) formed and operating under the laws of a foreign country; (2) with its principal place of business in that country; and (3) that is subject to the regulatory authority of that country's government or an agency or instrumentality thereof, or subject to the regulatory authority of an independent organization or exchange in that country that is subject to the regulatory authority of that government or an agency or instrumentality thereof. *See* proposed OCC By-Law, Article 1, §1(rrr).

[6] A "Foreign Clearing Member" means a Foreign Securities Firm that has been admitted to OCC membership in accordance with OCC's By-Laws and Rules. *Id.*

[7] Pursuant to revised OCC Rule 1102, OCC will notify this foreign regulatory authority if OCC suspends the FCM because of financial or operational difficulties. OCC also will notify the Commission in case of suspension or disciplinary action against an FCM because the Commission will be the FCM's "appropriate regulatory agency" ("ARA") as defined in section 3(a)(34)(C)(iv) of the Act. This status gives the Commission the full powers and responsibilities regarding OCC-FCM relationships granted to ARAs under the Act, including those related to clearing agency summary suspensions under section 17A(b)(5)(C) and final membership, service limitations, and disciplinary actions under Sections 19 (d) and (e).

[8] OCC By-Law Article I, section 1(rrr).

[9] OCC and the Philadelphia Stock Exchange Inc. ("Phlx") currently are discussing a proposal that would authorize the Phlx's London Office to inspect the books and records of English FCMs on OCC's behalf.

Rule 305(a); or (2) require further assurances of financial responsibility for its protection, *e.g.*, additional clearing fund and OCC margin deposits under OCC Rule 310.

The proposed rule change also imposes some additional requirements on FCMs to ensure that FCMs are treated the same as domestic Clearing Members. Section 3(i) of Article V of OCC's By-Laws would require FCMs with respect to customer option accounts to comply with Section 7 of the Act and Regulation T [10] promulgated thereunder by the Board of Governors of the Federal Reserve System.[11] In addition, subparagraph (j) of that By-Law would require an FCM to comply with NASD maintenance margin rules. OCC believes that compliance with these requirements should reduce the likelihood of FCM insolvencies resulting from the erosion of customer positions. Section 3(j) also would require an FCM to comply with NASD rules regarding cut-off times for submitting exercise notices to customers. This requirement will place foreign and domestic Clearing Members on an equal footing regarding the timing for submitting exercise notices.

Operational Requirements

OCC is requiring that each FCM demonstrate to OCC's satisfaction that its communications with OCC would be reliable and operated by capable personnel. Moreover, the FCM would be required to demonstrate sufficient back-up systems. OCC, however, proposes to waive with respect to FCMs OCC Rule 201's requirement that Clearing Members maintain an office in the vicinity of one of OCC's offices, provided the FCM establishes other acceptable arrangements for transacting business with OCC. OCC believes that existing overseas communication systems are highly reliable and could be used satisfactorily by FCMs and OCC.

Finally, proposed Section 3(k) of By-Law Article V would require an FCM to consent to the jurisdiction of Illinois courts and to the application of United States law in any dispute arising from OCC membership.[12] OCC's proposal also requries FCMs to appoint a domestic agent for service of process. OCC believes that these provisions are necessary to protect OCC in view of disparate foreign broker-dealer regulatory schemes and commercial laws. Moreover, this provision should help to ensure evenhanded treatment of domestic and Foreign Clearing Members.

OCC intends this proposal to encourage increased foreign participation in U.S. capital markets and to reduce foreign broker-dealers' costs of clearing U.S. options trades. OCC believes that the proposed rule change generally affords equal treatment to domestic and foreign securities firms to comply with OCC's By-Laws and Rules concerning OCC's margin and clearing fund requirements, clearance of exchange transactions, premium settlement, financial and operational requirements, financial reporting requirements and further assurances. In sum, OCC believes that the proposed rule change is consistent with section 17A of the Act because it protects OCC and its members while not permitting unfair discrimination in the admission of participants or among participants in their use of OCC services.

Discussion

The Commission is approving OCC's proposal because, consistent with section 17A of the Act, it will promote the prompt and accurate clearance and settlement of options transactions while ensuring the safeguarding of funds and securities in OCC's custody and control, or for which it is responsible. By enabling foreign broker-dealers to become direct OCC Clearing Members,[13] OCC's proposal has the potential to enhance the efficiency and accuracy of clearing and settling Foreign Securities Firms' U.S. options transactions. By eliminating the domestic Clearing Member intermediary between the FCM and OCC, the proposal will remove a processing layer, which, in turn, should reduce the possibility of transmission errors. Moreover, by removing that layer, clearance and settlement of FCM options transactions should be effected quicker than in the past.[14] In addition, FCMs no longer will need to pay fees to domestic Clearing Members for performing a broad array of clearance and settlement services. Thus, the Commission concludes that the proposal should promote the prompt, accurate and efficient clearance and settlement of securities transactions under section 17A(b)(3)(F) of the Act.

Section 17A(b)(3)(F) further contemplates eliminating undue financial or operational risk to National System participants by compelling all clearing agency participants to meet appropriate clearing agency safeguarding requirements. The Commission believes that OCC's proposal requires FCMs to meet appropriate financial and operational standards and gives OCC ample authority to protect itself and its members from FCM non-compliance or default.

By requiring FCMs to meet generally the same financial and operational standards as domestic OCC Clearing Members, the Commission believes that OCC's proposal imposes appropriate safeguarding requirements on FCMs without permitting unfair discrimination in the admission or activity of participants. First, OCC's proposal imposes on FCMs the full panoply of OCC's safeguarding mechanisms, including OCC margin deposits, clearing fund contributions, financial reporting, and operational requirements. Moreover, the proposal gives OCC the same flexibility regarding FCMs as it currently has over domestic Clearing Members when they experience financial or operational difficulties. For example, under the proposal, OCC will be able to require additional clearing fund deposits, margin deposits and variation margin from FCMs or to impose other sanctions as OCC deems necessary.

Second, the proposal requires FCMs to consent to the jurisdiction of Illinois courts and to the application of United States law on any issue arising from OCC membership. These provisions should eliminate to the extent possible under international law potential confusion of the parties' rights and obligations if disputes arise. Furthermore, requiring by contract that a FCM appoint a U.S. agent for service

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[10] 12 CFR 220.1 *et seq.*

[11] FCMs failing to comply with Article V, § 3(i) would be subject to the full range of OCC's disciplinary sanctions under Chapter XII of OCC's Rules, including censure, suspension, expulsion or limitation of activities, functions or operations.

[12] As in the case of domestic Clearing Members, Article VI, section 9(c) of OCC's By-Laws provides that the rights and obligations of OCC and its Clearing Members are governed by Articles 8 and 9 of the Uniform Commercial Code of Delaware, including the conflict of laws rules. However, Interpretation and Policy .01 to section 9(c) notes that, notwithstanding the above provision, "questions regarding the perfection of security interests in options may be governed by laws other than the law of Delaware."

[13] The Commission believes that admitting FCMs to direct OCC membership under OCC's proposed safeguards is appropriate under the Act. Although Section 17A(b)(3)(B) does not require clearing agencies to admit foreign broker-dealers, section 17A does not prohibit clearing agencies from exercising their independent judgment to make foreign broker-dealers, or other appropriate classes of entities eligible for admission. The overall thrust of section 17A reflects the intent of Congress to expand participation in the National Clearance and Settlement System ("National System") to include financial institutions that may benefit from participation in the National System, rather than to restrict participation to statutorily designated categories of financial institutions.

[14] Increased clearance and settlement efficiencies should facilitate FCM participation in U.S. options markets.

of process will facilitate legal action by OCC.

Finally, OCC's requirement that FCMs comply with Regulation T margin requirements should help to ensure that OCC will be able to safeguard funds and securities pursuant to Section 17A of the Act. Although Regulation T does not apply to a foreign broker-dealer transacting securities business outside the jurisdiction of the United States,[15] OCC contends that should not impose a significant burden on FCMs. It notes that Regulation T margin is already required of foreign firms by domestic broker-dealers that execute foreign firms' trades on U.S. options exchanges. For Regulation T purposes, those foreign firms are "customers" of the domestic broker-dealer.[16] In addition, while foreign branches of domestic broker-dealers generally are exempted from Regulation T margin requirements with respect to wholly foreign transactions, domestic broker-dealers, according to an informal OCC survey, generally require their foreign branches to follow the same practices as their domestic branches, including obtaining Regulation T margin from all customers. Accordingly, the Commission does not believe that OCC should be precluded from imposing Regulation T on FCMs and their customers by contract. This should serve to reduce the possibility that FCMs will be unable to meet their OCC obligations because of undercollateralized FCM customer option positions.[17] Thus, the proposed Regulation T requirement should not impose an unnecessary or inappropriate burden on competition as prohibited by section 17A(b)(3)(I), but rather should aid OCC in safeguarding funds and securities as required by Section 17A of the Act.

OCC's By-Laws and Rules will be required to meet all of OCC's substantive standards of financial responsibility, operational capability, experience and competence under section 1 of Article V of OCC's By-Laws. In addition, OCC represents that its Membership Committee, in determining which Foreign Securities Firms qualify as FCMs, will weigh other relevant factors, such as (1) the firm's home country regulatory scheme; (2) the degree of communication possible between OCC and the applicant's home country regulatory entity; and (3) any material adverse conditions that might affect the applicant's ability to satisfy its OCC-related obligations. As with the initial foreign firms interested in becoming FCMs, the Commission expects that OCC's staff and Membership Committee will conduct extensive educational and investigative discussions with foreign firm applicants and their regulators. Such efforts should include, among other things, explaining U.S. accounting policies, net capital and margin requirements, and the proper completion of FOCUS reports.

In summary, OCC's proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and should ensure the safeguarding of funds and securities in OCC's custody and control. Moreover, OCC's proposal opens direct OCC membership to foreign firms, helping to internationalize the U.S. securities markets. Accordingly, the Commission is approving OCC's proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change be, and thereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-14289 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

[15] *See* section 30(b) of the Act.

[16] Some foreign regulatory organizations (e.g., the London International Financial Futures Exchange, which regulates British options firms) currently only require members to charge clearing house margin to their customers. Thus, in some instances, the foreign broker-dealer may make Regulation T margin deposits with a domestic broker-dealer but only require domestic clearing house margin of its customers. Under OCC's proposal, FCMs would agree Regulation T margin on their customers.

[17] Furthermore, OCC states that the foreign broker-dealers currently contemplating becoming FCMs have not objected to this requirement on competitive grounds.

[Release No. 22117; File No. SR-Phlx-83-27]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change

On January 5, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder[2] to permit the trading on Phlx of standardized options on securities that are not listed and registered on a national securities exchange under Section 12(a) of the Act[3] but are designated as National Market System Securities ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public Commission meeting held on April 16, 1985, the Commission decided that Phlx's proposal would be consistent with the Act if Phlx eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that Phlx (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the Phlx amended its Rule 132 to state that that Rule [6] will not apply to any transaction through the facilities of NASDAQ in any option admitted to trading both on the Phlx and on NASDAQ on a stock that was traded through the facilities of NASDAQ at the time that option was admitted to trading on Phlx.[7] The Phlx also has agreed not to apply the "Options Allocation Agreement" [8] to options excepted from Rule 132.[9] The Phlx also committed to amending the Options Allocation Agreement pursuant to section 19(b)(1) in the near future.[10]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 78l(a) (1982).

[4] 17 CFR 240.11Aa2-1(b)(1) (1984). The proposed rule change (File No. SR-Phlx-83-27) was noticed in Securities Exchange Act Release No. 20690, January 6, 1984, 49 FR 7684.

[5] The Commission made the same finding with respect to proposals by the American ("Amex"), Boston, New York ("NYSE"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange, Inc. ("CBOE"), to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985 ("OTC Options Release"), 50 FR 20310. In that release, the Commission also made clear that once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR at 20331 n. 214. The Amex, CBOE, NYSE and PSE subsequently amended their rules to comply with this finding, and the Commission has approved those exchange respective proposals to trade options on Tier I NMS stocks. Securities Exchange Act Release Nos. 22094, 22098, 22103, 22104, May 31, 1985.

[6] Phlx Rule 132, in general, prohibits Phlx members from effecting over-the-counter ("OTC") transactions in securities listed on Phlx.

[7] File No. SR-Phlx-85-11. This filing also amended Phlx Rule 132 so that that rule does not apply to options on indexes composed entirely of OTC stocks. Securities Exchange Act Release No. 22044, May 17, 1985, 50 FR 21532.

[8] The Option Allocation Agreement consists of a uniform set of rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[9] Letter from Barbara Rothenberg, Senior Vice President and General Counsel, Phlx, to Alden Adkins, Attorney, Division of Market Regulation, dated May 31, 1985.

[10] Letter from Barbara Rothenberg, Senior Vice President and General Counsel, Phlx, to Alden Adkins, Attorney, Division of Market Regulation, dated May 24, 1985.

The Commission finds that the Phlx's previously approved proposal to amend Phlx Rule 132 (File No. SR-Phlx-85-11), as well as Phlx's agreement regarding the Allocation Agreement, effectively eliminate Phlx's barriers to the multiple trading of options on Tier 1 MMS stocks listed on Phlx. With this amendment to Phlx's rules, the Phlx's agreement regarding the Allocation Agreement,[11] for the reasons stated in the OCT Options Release, the Commission finds the Phlx proposal to trade options on NMS stocks (File No. SR-Phlx-83-27) is consistent with the Act.

The Commission also finds that Phlx has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[12] The Phlx also has agreed not to commence trading any option on an NMS stock earlier than June 10, 1985, after the date of this order and the announcement on May 29, 1985, of the Exchange's intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-Phlx-83-27 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-14291 Filed 6-12-85; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35:)

SSS Form No. and Title

21—Claim Documentation Form—Administrative
23—Claim Documentation Form—Divinity Student
24—Claim Documentation Form—Hardship
25—Claim Documentation Form—Minister
26—Claim Documentation Form—Alien or Dual National
27—Claim Documentation Form—Postponement
109C—College Student Certificate
109D—Divinity Student Certificate
109H—High School Student Certificate
130—Request for Relief From Training and Service in the Armed Forces of the United States
151—Statement of Intention to Participate in Alternative Service Employment Roster
254—Application for Voluntary Induction
350—Registrant Travel Reimbursement Request

Copies of any of the above identified forms can be obtained upon written request to: Selective Service System, Reports, Clearance Officer, Washington, D.C. 20435.

Written comments and recommendations for the proposed forms should be sent within 60 days of this notice, to: Selective Service, Reports Clearance Office, Washington, D.C. 20435.

Send a copy of the comments to: OMB Reports, Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Dated: June 7, 1985.

Thomas K. Turnage,

Director.

[FR Doc. 85-14252 Filed 6-12-85; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-5-134]

Fitness Determination of Executive Air Charter; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 85-5-134, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Executive Air Charter is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Objections shall be filed no later than June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-134 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-5-134 to that address.

Dated: May 31, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-14246 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-15]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 24, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

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[11] Although the Commission believes that the Phlx's agreement regarding the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes the Phlx should undertake, in coordination with the other Agreement participants, to prepare formal rule changes as soon as practicable. Phlx has stated that it intends to do so. *See* text accompanying note 10, *supra*.

[12] Phlx has indicated that this plan can be implemented by June 10, 1985. Trading cannot commence, of course, until the plan is operational.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 6, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITION FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24055-1	Port of Call Travel	14 CFR 91.303	To allow petitioner to operate eight Stage 1 Boeing 707 aircraft until hush kits are installed.
24135-1	Icelandair	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8 aircraft until hust kits are installed.
24356-1	Trans Global Airlines, Inc	14 CFR 91.303	To allow petitioner to operate two Stage 1 DC-8-55 aircraft until hush kits are intalled.
24388-1	Minerve	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-62-F aircraft until hush kits are installed.

[FR Doc. 85-14226 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Mount Union Borough, Huntingdon County, PA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement/section 4(f) evaluation will be prepared for a proposed highway project in Huntingdon County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: George J. Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone (717) 782-3411 or Dwayne Boor, Project Manager, Pennsylvania Department of Transportation, North Juniata Street, Hollidaysburg, Pennsylvania, 16648 Telephone (814) 696-7173.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, (PennDOT) will prepare an environmental impact statement/section 4(f) evalution on a proposal to relieve traffic congestion and safety problems on Traffic Route 522 in the Borough of Mt. Union, located in south central Pennsylvania. The proposed project is 1.9 miles in length and may consist of reconstruction of existing borough streets with minor right of way involvements, or a relocation of Traffic Route 522 on a new alignment adjacent to the eastern borough limits. The project begins just south of Mt. Union on a portion of T.R. 522 (recently reconstructed) and extends north 1.9 miles through the borough crossing the Juniata River, and ending at the intersection of T.R. 522 with existing U.S. 22. The purpose of this project is to relieve traffic congestion and delays currently occurring along existing T.R. 522 within the borough limits. The project has possible involvements with the East Broad Top Railroad National Historic Landmark and the Sharrar House (and a portion of the Pennsylvania Canal), recently determined to be eligible for the National Register of Historic Places.

Six basic alternatives will be considered in conjunction with the project: Four alternatives utilizing much of the existing borough street system (included in a Section 4(f) avoidance alternative); a 1.9 mile relocation alternative; and a do-nothing alternative. For each of the alternatives under study, the following areas will be investigated: Traffic, preliminary design and cost, air, noise, socioeconomic and land use, community impacts, historic resources, archaeological resources, water quality, floodplains and stormwater management, vegetation and wildlife (wetlands), and water resources. Since this project was originally advanced as an environmental assessment, numerous public meetings and public officials meetings were held in 1983 and 1984. The plan of study (POS) was sent to the appropriate federal, state and local agencies on January 10, 1984. An addendum to the POS will be forwarded to these agencies in June, 1985, noting that the project will now be processed with an environmental impact statement. Public involvement (via public hearing) and interagency coordination will be maintained throughout the development of the environmental impact statement/section 4(f) evaluation. Scoping meetings are planned with the concerned agencies for June, 1985.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the environmental impact statement/section 4(f) evaluation should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and federally assisted programs and projects apply to this program)

Issued on: June 7, 1985.

George L. Hannon,

Assistant Division Administrator.

[FR Doc. 85-14302 Filed 6-12-85; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS-Ap-No. 2291]

The Atchison, Topeka and Santa Fe Railway Co.; Reconsideration

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has petitioned the Federal Railroad Administration (FRA) for reconsideration of the agency's denial of

its request to discontinue the intermittent inductive automatic train stop system on two segments of its Los Angeles Division: (i) Between Milepost 81.3 near San Bernardino, California, and Milepost 124.2 near Arcadia, California, on the Second District, and (ii) between Milepost 736.7, near Daggett, California, and Milepost 746.4, near Barstow, California, on the Needles District. This proceeding is identified as FRA Block Signal Application No. 2291.

After examining Santa Fe's petition for reconsideration and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on July 30, 1985, in City Council Chambers for the City of San Bernardino, 300 North D Street, San Bernardino, California.

In accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), the hearing will be informal and will be conducted by a representative designated by the FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other documents may be submitted at the hearing for inclusion in the record of this proceeding. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on June 10, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-14265 Filed 6-12-85; 8:45am]

BILLING CODE 4910-06-MJ

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 15-85]

Treasury Notes of May 31, 1987; Series V-1987

Correction

In FR Doc. 85-12236 beginning on page 21160 in the issue of Wednesday, May 22, 1985, make the following corrections:

On page 21160, third column, paragraph 2.1, fifth line, "May 3" should read "May 31".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

Schedule of Productivity Improvement (A-76) Reviews for the Department of Medicine and Surgery

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A-76 and the September 27, 1984, memorandum to the President's Council on Management Improvement, the Veterans Administration, Department of Medicine and Surgery will be conducting productivity reviews and A-76 cost comparisons at various field stations to determine the most efficient organization (MEO) and the feasibility of contracting out specific commercial activities to private contractors.

Two schedules of commercial activities are shown: (1) A schedule of productivity (MEO) reviews which will not be cost compared with private industry; (2) a schedule of A-76 reviews which will undergo cost comparison with private industry. Activities are listed first by commercial activity, second by region and third by field facility. Most efficient organization reviews will be performed by Veterans Administration employees. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily (CBD) to ascertain bidder interest in contracting with the Government to perform the commercial activities scheduled for an A-76 cost comparison. No later than the deadline provided in the CBD advertisement two or more responsible business firms must indicate their interest in order for the review to proceed to a full cost comparison. If two or more potential bidders express interest, competitive bids will be solicited. These bids will be based upon VA's specifications called a performance work statement (PWS). Also, Government contracting procedures will be followed. Concurrently, using the same PWS, the VA will prepare an in-house cost estimate. Formal bids received from interested firms will be cost compared with the VA bid in accordance with OMB's Cost Comparison Handbook, supplement to OMB Circular A-76 and 38 U.S.C. 5010.

VA employees adversely affected or separated as a result of the conversion to contract must be offered the right of first refusal for employment openings under the contract for which they are qualified.

Should it become necessary to substantially change this schedule, appropriate notice will be posted herein.

FOR FURTHER INFORMATION CONTACT: Questions relating to the schedule of reviews for the Department of Medicine and Surgery may be directed to Mr. John M. Bradley at (202) 389-2706.

Requests for single copies of the schedule should be made in writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Questions relating to local matters about "contracting out" should be referred to the Director of the VA medical facility concerned.

Dated: June 4, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Aministrator.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Housekeeping Services			
Region No. 1:			
Bedford, MA	Oct. 1985	Feb. 1986	May 1986
Boston, MA	do	do	Do.
Brockton, MA	do	do	Do.
Manchester, NH	do	do	Do.
Northampton, MA	do	do	Do.
Providence, RI	do	do	Do.
Togus, ME	do	do	Do.
White River Junction, VT	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Albany, NY	Jan. 1986	May 1986	Aug. 1986.
Batavia, NY	do	do	Do.
Bath, NY	do	do	Do.
Buffalo, NY	do	do	Do.
Canandaigua, NY	do	do	Do.
Syracuse, NY	do	do	Do.
Bronx, NY	do	do	Do.
Brooklyn, NY	June 1986	Oct. 1986	Jan. 1987.
Castle Point, NY	do	do	Do.
Montrose, NY	do	do	Do.
Newington, CT	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2:			
Coatesville, PA	Jan. 1987	May 1987	Aug. 1987.
East Orange, NJ	do	do	Do.
Lebanon, PA	do	do	Do.
Lyons, NJ	do	do	Do.
Philadelphia, PA	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Wilmington, DE	do	do	Do.
Altoona, PA	do	do	Do.
Butler, PA	July 1987	Nov. 1987	Feb. 1988.
Clarksburg, WV	do	do	Do.
Erie, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Baltimore, MD	Oct. 1985	Feb. 1986	May 1986.
Ft. Howard, MD	do	do	Do.
Martinsburg, WV	do	do	Do.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Beckley, WV	July 1987	Nov. 1987	Feb. 1988.
Hampton, VA	do	do	Do.
Huntington WV	do	do	Do.
Salem, VA	do	do	Do.
Richmond, VA	do	do	Do.
Asheville, NC	Jan. 1986	May 1986	Aug. 1986.
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do.
Region No. 3:			
Augusta, GA	July 1987	Nov. 1987	Feb. 1988.
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur) GA	do	do	Do.
Dublin, GA	do	do	Do.
Biloxi, MS	July 1986	Nov. 1986	Feb. 1987.
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	July 1987	Nov. 1987	Feb. 1988.
Louisville, KY	do	do	Do.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	Jan. 1988	May 1988	Aug. 1988.
Gainesville, FL	do	do	Do.
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do.
Alexandria, LA	Oct. 1987	Feb. 1988	May 1988.
Fayetteville, AR	do	do	Do.
Little Rock, AR	do	do	Do.
New Orleans, LA	do	do	Do.
Region No. 4:			
Chillicothe, OH	Oct. 1985	Feb. 1986	May 1986.
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	Jan. 1987	May 1987	Aug. 1987.
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do.
Danville, IL	May 1987	Sept. 1987	Dec. 1987.
Ft. Wayne, IN	do	do	Do.
Indianapolis, IN	do	do	Do.
Iron Mountain, MI	Apr. 1987	Aug. 1987	Nov. 1987.
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (LS), IL	Dec. 1987	Apr. 1988	July 1988.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	July 1987	Nov. 1987	Feb. 1988.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Marion, IL	do	do	Do.
Poplar Bluff, MO	do	do	Do.
St. Louis, MO	do	do	Do.
Region No. 5:			
Fargo, ND	Nov. 1987	Mar. 1988	June 1988.
Minneapolis, MN	do	do	Do.
Sioux Falls, SD	Sept. 1987	Jan. 1988	Apr. 1988.
St. Cloud, MN	Nov. 1987	Mar. 1988	June 1988.
Bonham, TX	Sept. 1987	Jan. 1988	Apr. 1988.
Dallas, TX	Aug. 1987	Dec. 1987	Mar. 1988.
Houston, TX	do	do	Do.
Kerrville, TX	do	do	Do.
Marlin, TX	do	do	Do.
Muskogee, OK	do	do	Do.
Oklahoma City, OK	do	do	Do.
San Antonio, TX	do	do	Do.
Temple, TX	do	do	Do.
Waco, TX	do	do	Do.
Kansas City, MO	do	do	Do.
Leavenworth, KS	do	do	Do.
Topeka, KS	June 1987	Oct. 1987	Jan. 1988.
Wichita, KS	do	do	Do.
Des Moines, IA	Apr. 1987	Aug. 1987	Nov. 1987
Ft. Meade, SD	do	do	Do.
Grand Island, NE	do	do	Do.
Hot Springs, SD	do	do	Do.
Knoxville, IA	do	do	Do.
Lincoln, NE	do	do	Do.
Omaha, NE	do	do	Do.
Cheyenne, WY	Mar. 1987	July 1987	Oct. 1987
Denver, CO	do	do	Do.
Ft. Harrison, MT	do	do	Do.
Ft. Lyon, CO	do	do	Do.
Grand Junction, CO	do	do	Do.
Miles City, MT	do	do	Do.
Salt Lake City, UT	do	do	Do.
Sheridan, WY	do	do	Do.
Region No. 6:			
Albuquerque, NM	Feb. 1987	June 1987	Sept. 1987
Amarillo, TX	do	do	Do.
Big Spring, TX	do	do	Do.
Phoenix, AZ	do	do	Do.
Prescott, AZ	do	do	Do.
Tucson, AZ	do	do	Do.
Loma Linda, CA	Jan. 1987	May 1987	Aug. 1987
Long Beach, CA	do	do	Do.
San Diego, CA	do	do	Do.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Fresno, CA	Dec. 1987	Apr. 1988	July 1988.
Livermore, CA	do	do	Do.
Martinez, CA	do	do	Do.
Palo Alto, CA	do	do	Do.
Reno, NV	do	do	Do.
San Francisco, CA	do	do	Do.
American Lake, WA	Nov. 1987	Mar. 1988	June 1988.
Boise, ID	do	do	Do.
Portland, OR	do	do	Do.
Roseburg, OR	do	do	Do.
Seattle, WA	do	do	Do.
Spokane, WA	do	do	Do.
Walla Walla, WA	do	do	Do.
White City, OR	do	do	Do.
Plant Maintenance			
Region No. 1:			
Bedford, MA	Jan. 1986	May 1986	Aug. 1986.
Boston, MA	do	do	Do.
Brockton, MA	do	do	Do.
Manchester, NH	do	do	Do.
Northampton, MA	do	do	Do.
Providence, RI	do	do	Do.
Togus, ME	do	do	Do.
White River Junction, VT	do	do	Do.
Albany, NY	July 1986	Nov. 1986	Feb. 1987
Batavia, NY	do	do	Do.
Buffalo, NY	do	do	Do.
Canandaigua, NY	do	do	Do.
Syracuse, NY	do	do	Do.
Bronx, NY	Sept. 1986	Jan. 1987	Apr. 1987
Brooklyn, NY	do	do	Do.
Castle Point, Ny	do	do	Do.
Montrose, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	do.
San Juan, PR	do	do	Do.
West haven, CT	do	do	Do.
Region No. 2.			
Coatesville, PA	July 1987	Nov. 1987	Feb. 1988.
East Organge, NJ	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Lebanon, PA	do	do	Do.
Lyons, NJ	do	do	Do.
Philadelphia, PA	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Butler, PA	Aug. 1988	Dec. 1988	Mar. 1989.
Pittsburg (UD), PA	do	do	Do.
Baltimore, MD	Feb. 1986	June 1986	Sept. 1986.
Ft. Howard, MD	do	do	Do.
Martinsburg, WV	do	do	Do.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Hampton, VA	Jan. 1988	May 1988	Aug. 1988.
Huntington, WV	do	do	Do.
Richmond, VA	do	do	Do.
Salem, VA	do	do	Do.
Asheville, NC	July 1986	Nov. 1986	Feb. 1987.
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do.
Region No. 3:			
Augusta, GA	Jan. 1988	May 1988	Aug. 1988.
Charleston, SC	do	do	Do.
Columbia,SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Dublin, GA	do	do	Do.
Biloxi, MS	Jan. 1987	May 1987	Aug. 1987.
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do.
Louisville, KY	Jan. 1988	May 1988	Aug. 1988.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	July 1988	Nov. 1988	Feb. 1989.
Gainesville, FL	do	do	Do.
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do.
Alexandria, LA	June 1988	Oct. 1988	Jan. 1989.
Little Rock, AR	do	do	Do.
New Orleans, LA	do	do	Do.
Region No. 4:			
Chillicothe, OH	Feb. 1986	June 1986	Sept. 1986.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	July 1987	Nov. 1987	Feb. 1988.
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do.
Danville, IL	Jan. 1989	May 1989	Aug. 1989.
Indianapolis, IN	do	do	Do.
Iron Mountain, MI	Dec. 1988	Apr. 1989	July 1989
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (LS), IL	May 1988	Sept. 1988	Dec. 1988.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	Mar. 1988	July 1988	Nov. 1988.
Marion, IL	do	do	Do.
Popular Bluff, MO	do	do	Do.
St. Louis, MO	do	do	Do.
Region No. 5:			
Fargo, ND	Apr. 1988	Aug. 1988	Nov. 1988.
Minneapolis, MN	do	do	Do.
Sioux Falls, SD	May 1988	Sept. 1988	Dec. 1988.
Bonham, TX	do	do	Do.
Dallas, TX	Apr. 1988	Aug. 1988	Nov. 1988.
Houston, TX	do	do	Do.
Kerrville, TX	do	do	Do.
Marlin, TX	do	do	Do.
Muskogee, OK	do	do	Do.
Oklahoma City, OK	do	do	Do.
San Antonio, TX	do	do	Do.
Temple, TX	do	do	Do.
Waco, TX	do	do	Do.
Kansas City, MO	do	do	Do.
Leavenworth, KS	do	do	Do.
Topeka, KS	do	do	Do.
Wichita, KS	Feb. 1988	June 1988	Sept. 1988.
Des Moines, IA	do	do	Do.
Grand Island, NE	Dec. 1987	Apr. 1988	July 1988
Hot Springs, SD	do	do	Do.
Knoxville IA	do	do	Do.
Omaha, NE	do	do	Do.
Denver, CO	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Ft. Lyon, CO	July 1987	Nov. 1987	Feb. 1988.
Salt Lake City, UT	do	do	Do.
Sheridan, WY	do	do	Do.
Region No. 6:			
Albuquerque, NM	June 1987	Oct. 1987	Jan. 1988.
Amarillo, TX	do	do	Do.
Big Spring, TX	do	do	Do.
Phoenix, AZ	do	do	Do.
Prescott, AZ	do	do	Do.
Tucson, AZ	do	do	Do.
Loma Linda, CA	May 1987	Sept. 1987	Dec. 1987.
Long Beach, CA	do	do	Do.
San Diego, CA	do	do	Do.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Fresno, CA	Apr. 1987	Aug. 1987	Nov. 1987.
Livermore, CA	do	do	Do.
Martinez, CA	do	do	Do.
Palo Alto, CA	do	do	Do.
Reno, NV	do	do	Do.
San Francisco, CA	do	do	Do.
American Lake, WA	Mar. 1987	July 1987	Oct. 1987.
Boise, ID	do	do	Do.
Portland, OR	do	do	Do.
Roseburg, OR	do	do	Do.
Seattle, WA	do	do	Do.
Spokane, WA	do	do	Do.
Walla Walla, WA	do	do	Do.
Region No. 1:			
Bedford, MA	July 1986	Nov. 1986	Feb. 1987.
Boston, MA	do	do	Do.
Brockton, MA	do	do	Do.
Manchester, NH	do	do	Do.
Northampton, MA	do	do	Do.
Providence, RI	do	do	Do.
Togus, ME	do	do	Do.
White River Junction, VT	do	do	Do.
Albany, NY	Sept. 1986	Jan. 1987	Apr. 1987.
Batavia, NY	do	do	Do.
Bath, NY	do	do	Do.
Buffalo, NY	do	do	Do.
Canandaigua, NY	do	do	Do.
Syracuse, NY	do	do	Do.
Bronx, NY	Jan. 1987	May 1987	Aug. 1987.
Brooklyn, NY	do	do	Do.
Castle Point, NY	do	do	Do.
Montrose, NY	do	do	Do.
Newington, CT	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2:			
Coatesville, PA	July 1987	Nov. 1987	Feb. 1988.
East Orange, NJ	do	do	Do.
Lebanon, PA	do	do	Do.
Lyons, NJ	Jan. 1988	May 1988	Aug. 1988.
Philadelphia, PA	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Wilmington, DE	do	do	Do.
Altoona, PA	do	do	Do.
Butler, PA	do	do	Do.
Clarksburg, WV	do	do	Do.
Erie, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Baltimore, MD	Nov. 1986	March 1987	June 1987.
Ft. Howard, MD	do	do	Do.
Martinsburg, WV	do	do	Do.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Beckley, VA	July 1987	Nov. 1987	Feb. 1988.
Hampton, VA	do	do	Do.
Huntington, WV	do	do	Do.
Richmond, VA	do	do	Do.
Salem, VA	do	do	Do.
Asheville, NC	Jan. 1976	May 1987	Aug. 1987.
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do.
Region No. 3:			
Augusta, GA	July 1988	November 1988	February 1989.
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Dublin, GA	do	do	Do.
Biloxi, MS	July 1987	November 1987	February 1988.
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	July 1988	November 1988	February 1989.
Louisville, KY	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	January 1989	May 1989	August 1989.
Gainesville, FL	do	do	Do.
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do.
Alexandria, LA	do	do	Do.
Fayetteville, AR	do	do	Do.
Little Rock, AR	do	do	Do.
New Orleans, LA	do	do	Do.
Region No. 4:			
Chillicothe, OH	August 1986	December 1986	March 1987.
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	January 1988	May 1988	August 1988.
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do.
Danville, IL	May 1988	September 1988	December 1988.
Ft. Wayne, IN	January 1989	May 1989	August 1989.
Indianapolis, IN	May 1988	September 1988	December 1988.
Iron Mountain, MI	April 1988	August 1988	November 1988.
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (LS) IL	May 1989	September 1989	December 1989.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	September 1988	January 1989	April 1989.
Marion, IL	do	do	Do.
Poplar Bluff, MO	do	do	Do.
St. Louis, MO	do	do	Do.
Region No. 5			
Fargo, ND	November 1988	March 1989	June 1989.
Minneapolis, MN	do	do	Do.
Sioux Falls, SD	December 1988	April 1989	July 1989.
St. Cloud, MN	November 1988	March 1989	June 1989.
Bonham, TX	December 1988	April 1989	July 1989.
Dallas, TX	do	do	Do.
Houston, TX	do	do	Do.
Kerrville, TX	do	do	Do.
Muskogee, OK	do	do	Do.
Oklahoma City, OK	do	do	Do.
San Antonio, TX	do	do	Do.
Temple, TX	do	do	Do.
Waco, TX	do	do	Do.
Kansas City, MO	do	do	Do.
Leavenworth, KS	do	do	Do.
Topeka, KS	do	do	Do.
Wichita, KS	September 1988	January 1989	April 1989.
Des Moines, IA	do	do	Do.
Ft. Meade, SD	August 1988	December 1988	March 1989.
Grand Island, NE	do	do	Do.
Hot Springs, SD	do	do	Do.
Knoxville, IA	do	do	Do.
Lincoln, NE	do	do	Do.
Omaha, NE	do	do	Do.
Cheyenne, WY	do	do	Do.
Denver, CO	July 1988	November 1988	February 1989.
Ft. Harrison, MT	do	do	Do.
Ft. Lyon, CO	do	do	Do.
Grand Junction, CO	do	do	Do.
Miles City, MT	do	do	Do.
Salt Lake City, UT	do	do	Do.
Sheridan, WY	do	do	Do.
Region No. 6:	November 1988	March 1989	June 1989.
Albuquerque, NM	October 1988	February 1989	May 1989.
Amarillo, TX	do	do	Do.
Big Spring, TX	do	do	Do.
Phoenix, AZ	do	do	Do.
Prescott, AZ	do	do	Do.
Loma Linda, CA	September 1988	January 1989	April 1989.
Long Beach, CA	do	do	Do.
San Diego, CA	do	do	Do.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	August 1988	December 1988	March 1989.
Fresno, CA	July 1988	November 1988	February 1989.
Livermore, CA	do	do	Do.
Martinez, CA	do	do	Do.
Palo Alto, CA	do	do	Do.
Reno, NV	do	do	Do.
San Francisco, CA	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
American Lake, WA	June 1988	October 1988	January 1989.
Boise, ID	do	do	Do.
Portland, OR	do	do	Do.
Roseburg, OR	do	do	Do.
Seattle, WA	do	do	Do.
Spokane, WA	do	do	Do.
Walla Walla, WA	do	do	Do.
White City, OR	do	do	Do.
Medical Information			
Region No. 1:			
Boston, MA	October 1986	February 1987	May 1987.
Brockton, MA	do	do	Do.
Albany, NY	November 1986	March 1987	June 1987.
Buffalo, NY	do	do	Do.
Bronx, NY	June 1987	October 1987	January 1988.
Brooklyn, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2:			
Baltimore, MD	September 1987	January 1988	April 1988.
Washington, DC	March 1987	July 1987	October 1987.
Asheville, NC	July 1987	November 1987	February 1988.
Region No. 3:			
Augusta, GA	January 1989	May 1989	August 1989.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Biloxi, MS	June 1988	October 1988	January 1989.
Birmingham, AL	January 1988	May 1988	August 1988.
Lexington, KY	July 1988	November 1988	February 1989.
Miami, FL	July 1989	November 1989	February 1990.
Tampa, FL	do	do	Do.
Alexandria, LA	October 1986	January 1987	April 1987.
Region No. 4:			
Cincinnati, OH	January 1987	May 1987	August 1987.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	July 1988	November 1988	February 1989.
Battle Creek, MI	do	do	Do.
Wood, WI	November 1986	March 1987	June 1987.
Chicago (LS), IL	October 1986	February 1987	May 1987.
Chicago (WS), IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	June 1966	October 1986	January 1987.
St. Louis, MO	do	do	Do.
Region No. 5:			
Minneapolis, MN	October 1986	February 1987	1987.
Houston, TX	September 1986	January 1987	April 1987.
San Antonio, TX	do	do	Do.
Region No. 6:			
Albuquerque, NM	January 1986	May 1986	August 1986.
Long Beach, CA	September 1986	January 1987	April 1987.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Portland, OR	March 1986	July 1986	October 1986.
Office Operations			
Region No. 1:			
Boston, MA	December 1986	April 1987	July 1987.
Brockton, MA	do	do	Do.
Providence, RI	October 1986	February 1987	May 1987.
Albany, NY	February 1987	June 1987	September 1987.
Buffalo, NY	do	do	Do.
Bronx, NY	November 1987	March 1988	June 1988.
Brooklyn, NY	do	do	Do.
Montrose, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2:			
Coatesville, PA	July 1988	November 1988	February 1989.
East Orange, NJ	do	do	Do.
Lyons, NJ	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Martinsburg, WV	September 1987	January 1988	April 1988.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Richmond, VA	December 1987	April 1988	July 1988.
Salem, VA	June 1988	October 1988	January 1989.
Asheville, NC	January 1988	May 1988	August 1988.
Mountain Home, TN	do	do	Do.
Region No. 3:			
Augusta, GA	July 1989	November 1989	February 1990
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Biloxi, MS	July 1988	November 1988	February 1989.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	Completion date	Implementation date
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	January 1989	May 1989	August 1989.
Louisville, KY	do	do	Do.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	September 1989	January 1990	April 1990
Gainesville, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do.
Little Rock, AR	do	do	Do.
New Orleans, LA	do	do	Do.
Region No. 4:			
Chillicothe, OH	July 1987	November 1987	February 1988.
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	January 1989	May 1989	August 1989.
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Indianapolis, IN	October 1986	February 1987	May 1987.
Madison, WI	November 1986	March 1987	June 1987.
Wood, WI	May 1986	September 1986	December 1986.
Chicago (LS), IL	do	do	Do.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	December 1986	April 1987	July 1987.
St. Louis, MO	do	do	Do.
Region No. 5:			
Minneapolis, MN	December 1986	April 1987	July 1987.
Dallas, TX	January 1987	May 1987	August 1987.
Houston, TX	do	do	Do.
Oklahoma City, OK	September 1986	January 1987	April 1987.
San Antonio, TX	January 1987	May 1987	August 1987.
Temple, TX	September 1986	January 1987	April 1987.
Waco, TX	do	do	Do.
Kansas City, MO	do	do	Do.
Topeka, KS	December 1985	April 1986	July 1986.
Des Moines, IA	January 1986	May 1986	August 1986.
Denver, CO	do	do	Do.
Region No. 6:			
Albuquerque, MN	November 1985	March 1986	June 1986.
Phoenix, AZ	do	do	Do.
Tucson, AZ	do	do	Do.
Loma Linda, CA	do	do	Do.
Long Beach, CA	December 1986	April 1987	July 1987.
San Diego, CA	do	do	Do.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Palo Alto, CA	March 1986	July 1986	October 1986.
San Francisco, CA	do	do	Do.
Seattle, WA	September 1986	January 1987	April 1987.
Portland, OR	do	do	Do.

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Chauffeur Services						
Region No. 1:						
Brockton, MA	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987
Bath, NY	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Region No. 2:						
East Orange, NJ	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988
Lyons, NJ	do	do	do	do	do	Do.
Pittsburgh (UD), PA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Region No. 3:						
Miami, FL	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988
Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 4:						
Cleveland, OH	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Dayton, OH	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Battle Creek, MI	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
North Chicago, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
St. Louis, MO	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Region No. 5:						
Leavenworth, KS	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Region No. 6:						
West Los Angeles, CA	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Design/Drafting Services						
Region No. 3:						
Little Rock, AR	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Data Entry/Keypunching Services						
Region No. 6:						
West Los Angeles, CA	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
Fire Protection						
Region No. 1:						
Northhampton, MA	September 1985	February 1985	July 1986	August 1986	December 1986	February 1987.
Bath, NY	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Canadaigua, NY	do	do	do	do	do	Do.
Castle Point, NY	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Montrose, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
Region No. 2:						
Coatsville, PA	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Lyons, NJ	do	do	do	do	do	Do.
Butler, PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Martinsburg, WV	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Perry Point, MD	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Hampton, VA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Region No. 3:						
Tuskegee, AL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Murfreesboro, TN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Alexandria, LA	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Little Rock, AR	do	do	do	do	do	Do.
Region No. 4:						
Chilicothe, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Cleveland, OH	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Marion, IN	do	do	do	do	do	Do.
Tomah, WI	do	do	do	do	do	Do.
Hines, IL	do	do	do	do	do	Do.
Marion IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987.
Region No. 5:						
Minneapolis, MN	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Leavenworth, KS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Ft. Meade, SD	do	do	do	do	do	Do.
Knoxville, IA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Ft. Harrison, MT	do	do	do	do	do	Do.
Ft. Lyon, CO	do	do	do	do	do	Do.
Sheridan, WY	do	do	do	do	do	Do.
Region No. 6:						
Livermore, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
American Lake, WI	do	do	do	do	do	Do.
White City, OR	do	do	do	do	do	Do.
Region No. 1:						
Furniture Repair						
San Juan, PR	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Grounds maintenance						
Region No. 1:						
Canandaigua, NY	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Brooklyn, NY	do	do	do	do	do	Do.
Region No. 2:						
Coatsville, PA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
Lebanon, PA	do	do	do	do	do	Do.
Mountain Home, TN	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Region No. 3:						
Biloxi, MS	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Murfreesboro, TN	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Bay Pines, FL	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Region No. 4:						
Cleveland, OH	March 1986	August 1986	January 1987,	February 1987	June 1987	August 1987.
Dayton, OH	do	do	do	do	do	Do.
Battle Creek, MI	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
Wood, WI	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
North Chicago, IL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
St. Louis, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Region No. 5:						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Dallas, TX	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Houston, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Ft. Lyon, CO	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
West Los Angeles, CA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Interior Design						
Region No. 6:						
West Los Angeles, CA	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987.
Laundry and Drycleaning Services						
Region No.1:						
Bedford, MA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Brockton, MA	do	do	do	do	do	Do

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Northampton, MA	do	do	do	do	do	Do.
Bath, NY	do	do	do	do	do	Do.
Buffalo, NY	do	do	do	do	do	Do.
Canadigua, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Brooklyn, NY	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Jaun, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2:						
Coatsville, PA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Lebanon, PA	do	do	do	do	do	Do.
Lyons, NJ	do	do	do	do	do	Do.
Wilkes Barre, PA	do	do	do	do	do	Do.
Pittsburgh (UD), PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Martinsburg, WV	do	do	do	do	do	Do.
Perry Point, MD	do	do	do	do	do	Do.
Hampton, VA	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Richmond, VA	do	do	do	do	do	Do.
Salem, VA	do	do	do	do	do	Do.
Asheville, NC	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Mountain Home, TN	do	do	do	do	do	Do.
Salisbury, NC	do	do	do	do	do	Do.
Region No. 3:						
Augusta, GA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Biloxi, MS	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Tuscaloosa, AL	do	do	do	do	do	Do.
Tuskegee, AL	do	do	do	do	do	Do.
Louisville, KY	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Murfreesboro, TN	do	do	do	do	do	Do.
Bay Pines, FL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Lake City, FL	do	do	do	do	do	Do.
Miami, FL	do	do	do	do	do	Do.
Alexandria, LA	do	do	do	do	do	Do.
Little Rock, AR	do	do	do	do	do	Do.
Region No. 4:						
Chillicothe, OH	August 1985	January 1986	June 198	July 1986	November 1986	January 1987
Cleveland, OH	do	do	do	do	do	Do.
Dayton, Oh	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Marion, WI	do	do	do	do	do	Do.
Madison, WI	July 1985	December 1986	May 1987	June 1987	October 1987	December 1987
Tomah, WI	do	do	do	do	do	Do.
Wood, WI	do	do	do	do	do	Do.
North Chicago, IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987
Hines, IL	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
St. Louis, MO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 5:						
Minneapolis, MN	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987
Sioux Falls, SD	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987
St. Cloud, MN	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987
Dallas, TX	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Houston, TX	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Oklahoma City, OK	do	do	do	do	do	Do.
San Antonio, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Lincoln, NE	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Salt Lake City, UT	do	do	do	do	do	Do.
Region No. 6:						
Phoenix, AZ	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Diego, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
American Lake, WA	do	do	do	do	do	Do.
Portland, OR	do	do	do	do	do	Do.
Mail/Messenger Services						
Region No. 6:						
West Los Angeles, CA	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Printing/Reproduction Services						
Region No. 4:						
Cincinnati, OH	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Switchboard Services						
Region No. 1:						
Brockton, MA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987
Brooklyn, NY	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987
New York, NY	do	do	do	do	do	Do.
Region No. 2:						
East Orange, NJ	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987
Washington, DC	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Richmond, VA	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987
Region No. 3:						
Augusta, GA	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988
Memphis, TN	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987
Miami, FL	do	do	do	do	do	Do.
Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987

SCHEDULE OF A-76 COST COMPARISONS, DEPARTMENT OF MEDICINE AND SURGERY—Continued

[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Region No. 4:						
Cleveland, OH	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Wood, WI	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Hines, IL	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Region No. 5:						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
Houston, TX	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Transcription Services						
Region No. 2:						
Pittsburgh (UD), PA	October 1986	March 1987	August 1987	September 1987	January 1988	March 1988.
Richmond, VA	November 1986	April 1987	September 1987	October 1987	February 1988	April 1988.
Salisbury, NC	October 1986	March 1987	August 1987	September 1987	January 1988	March 1988.
Region No. 3:						
Tuskegee, AL	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987
Louisville, KY	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Nashville, TN	do	do	do	do	do	Do.
Miami, FL	do	do	do	do	do	Do.
Little Rock, AR	December 1986	May 1987	October 1987	November 1987	March 1988	May 1988.
New Orleans, LA	do	do	do	do	do	Do.
Region No. 4:						
Cleveland, OH	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988.
Allen Park, MI	do	do	do	do	do	Do.
Tomah, WI	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987
Wood, WI	do	do	do	do	do	Do.
Hines, IL	do	do	do	do	do	Do.
Region No. 5:						
Minneapolis, MN	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Houston, TX	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987
San Antonio, TX	do	do	do	do	do	Do.
Denver, CO	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	October 1986	March 1987	August 1987	September 1987	January 1988	March 1988.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Portland, Or	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
VCA Food Services						
Region No.1:						
Bedford, MA	August 1985	January 1986	June 1986	November 1986	January 1987.	
Boston, MA	do	do	do	do	do	Do.
Brockton, MA	do	do	do	do	do	Do.
Providence, RI	do	do	do	do	do	Do.
Togus, ME	do	do	do	do	do	Do.
Albany, NY	do	do	do	do	do	Do.
Buffalo, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Montrose, NY	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988.
New York, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2:						
Coatesville, PA	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987.
East Orange, NJ	do	do	do	do	do	Do.
Lyons, NJ	do	do	do	do	do	Do.
Wilkes Barre, PA	do	do	do	do	do	Do.
Pittsburgh (HD), PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Pittsburgh (UD), PA	do	do	do	do	do	Do.
Martinsburg, WV	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Washington, DC	do	do	do	do	do	Do.
Richmond, VA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Salem, VA	do	do	do	do	do	Do.
Asheville, NC	do	do	do	do	do	Do.
Fayetteville, NC	do	do	do	do	do	Do.
Mountain Home, TN	do	do	do	do	do	Do.
Region No. 3:						
Augusta, GA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Charleston, SC	do	do	do	do	do	Do.
Columbia, SC	do	do	do	do	do	Do.
Atlanta (Decatur), GA	do	do	do	do	do	Do.
Biloxi, MS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Birmingham, AL	do	do	do	do	do	Do.
Jacksonville, MI	do	do	do	do	do	Do.
Lexington, KY	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987
Memphis, TN	do	do	do	do	do	Do.
Nashville, TN	do	do	do	do	do	Do.
Bay Pines, FL	do	do	do	do	do	Do.
Gainesville, FL	do	do	do	do	do	Do.
Miami, FL	do	do	do	do	do	Do.
Tampa, FL	do	do	do	do	do	Do.
Little Rock, AR	do	do	do	do	do	Do.
New Orleans, LA	do	do	do	do	do	Do.

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[VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Region No. 4:						
Cincinnati, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	do	do	do	do	do	Do.
Ann Arbor, MI	do	do	do	do	do	Do.
Danville, IL	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
Indianapolis, IN	do	do	do	do	do	Do.
Wood, WI	April 1986	September 1986	February 1987	March 1987	July 1987	September 1987.
Hines, IL	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Columbia, MO	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
St. Louis, MO	do	do	do	do	do	Do.
Region No. 5:						
Minneapolis, MN	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Houston, TX	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Oklahoma City, OK	do	do	do	do	do	Do.
San Antonio, TX	do	do	do	do	do	Do.
Temple, TX	do	do	do	do	do	Do.
Kansas City, KS	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
Leavenworth, KS	do	do	do	do	do	Do.
Topeka, KS	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987.
Des Moines, IA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Iowa City, IA	do	do	do	do	do	Do.
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 6:						
Phoenix, AZ	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Tucson, AZ	do	do	do	do	do	Do.
Loma Linda, CA	do	do	do	do	do	Do.
Long Beach, CA	do	do	do	do	do	Do.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Fresno, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
American Lake, WA	do	do	do	do	do	Do.
Portland, OR	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
Warehouse Services:						
Region No. 1:						
Brockton, MA	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Buffalo, NY	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Brooklyn, NY	November 1985	April 1986	September 1986	October 1986	February 1987	April 1987.
New York, NY	do	do	do	do	do	Do.
Northport, NY	do	do	do	do	do	Do.
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2:						
East Orange, NJ	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Pittsburgh (UD), PA	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Washington, DC	September 1986	February 1987	July 1987	August 1987	December 1987	February 1988
Richmond, VA	February 1986	July 1986	December 1986	January 1987	May 1987	July 1987.
Mountain Home, TN	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Region No. 3:						
Augusta, GA	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Columbia, SC	do	do	do	do	do	Do.
Biloxi, MS	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Tuskegee, AL	do	do	do	do	do	Do.
Lexington, KY	do	do	do	do	do	Do.
Memphis, TN	do	do	do	do	do	Do.
Murfreesboro, TN	do	do	do	do	do	Do.
Bay Pines, FL	do	do	do	do	do	Do.
Tampa, FL	do	do	do	do	do	Do.
Little Rock, AR	May 1986	October 1986	March 1987	April 1987	August 1987	October 1987.
New Orleans, LA	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Region No. 4:						
Cincinnati, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Indianapolis, IN	August 1986	January 1987	June 1987	July 1987	November 1987	January 1988.
Wood, WI	do	do	do	do	do	Do.
North Chicago, IL	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Hines, IL	July 1986	December 1986	May 1987	June 1987	October 1987	December 1987.
St. Louis, IL	January 1986	June 1986	November 1986	December 1986	April 1987	June 1987.
Region No. 5:						
Minneapolis, MN	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Houston, TX	March 1986	August 1986	January 1987	February 1987	June 1987	August 1987.
Oklahoma City, OK	do	do	do	do	do	Do.
San Antonio, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo, Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Portland, OR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Seattle, WA	do	do	do	do	do	Do.

[FR Doc. 85-14007 Filed 6-12-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 114
Thursday, June 13, 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).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–110–24083.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Monday, June 17, 1985.

CHANGES IN THE MEETING:

1. 9:00 AM (Eastern Time), Monday, June 17, 1985
2. The following matter was not discussed at the June 11, 1985 Commission Meeting and is being carried over to the June 17, 1985 Commission Meeting:
"Proposed Commission Decision"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: June 11, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 11, 1985.

[FR Doc. 85–14386 Filed 6–11–85; 3:06 pm]

BILLING CODE 6750-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 18, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization; GC Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: June 11, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 11, 1985.

[FR Doc. 85–14387 Filed 6–11–85; 3:06 pm]

BILLING CODE 6750-06-M

3

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 6–85]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, and Time, and Subject Matter

Wed., June 26, 1985 at 10:30 a.m.—Consideration of Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96–606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claim Settlement Commission, 1111–20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C., on June 5, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 85–14310 Filed 6–10–85; 8:45 am]

BILLING CODE 4410-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 18, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,249–NR (Amendment)—First National Bank of Carrington, Carrington, North Dakota

Case No. 46,252–SR—Republic Bank of Kansas City, Kansas City, Missouri

Reports of committees and officers:

Minutes of actions approved by the standing committes of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive

Secretary of the Corporation, at (202) 389–4425.

Dated: June 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85–14360 Filed 6–11–85; 12:17 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 18, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks 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)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–14361 Filed 6–11–85; 12:17 pm]

BILLING CODE 6714–01–M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 18, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO DE DISCUSSED: Compliance. Litigation. Audits. Personnel. Request for status report on Presidential primary audits.

DATED AND TIME: Thursday, June 20, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of furture meetings
Correction and approval of Minutes
Eligibility for candidates to receive Presidential
Primary matiching funds
Draft advisory opinion 1985–17
  Richard Rossi, Co-Chairman
  Barbara Harris, Co-Chairman
  Congressional Youth Leadership Council
Announcement of effective date: Repayments by publicly financed Presidential candidates
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–14396 Filed 6–11–85; 3:41 pm]

BILLING CODE 6715–01–M

7

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, July 10, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of June, 1985.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

Date of notice: June 6, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85–14305 Filed 6–10–85; 4:15 pm]

BILLING CODE 7550–01–M

8

POSTAL SERVICE

(Board of Governors)

Notice of Vote to Close Meeting

At its meeting on June 4, 1985, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for July 8, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to

public observation, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 85-14330 Filed 6-11-85; 10:28 am]

BILLING CODE 7710-12-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 17, 1985.

An open meeting will be held on Tuesday, June 18, 1985, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, June 18, 1985, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, June 18, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt a new exemptive regulation, Regulation AFDB, which would specify the periodic and other reports which would be required to be filed by the African Development Bank as a result of primary distribution of securities in the United States. For further information, please contact Martin Meyrowitz at (202) 272-3250.

2. Consideration of whether to issue a release adopting Securities Exchange Act Rule 3b-9 which excludes from the definition of "bank" as found in Section 3(a)(6) of the Securities Exchange Act of 1934, banks which engage in certain securities activities. For further information, please contact Amy Natterson Kroll at (202) 272-2848.

The subject matter of the closed meeting scheduled for Tuesday, June 18, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Regulatory matter regarding financial institutions.
Consideration of *amicus* participation.
Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272-2468.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-14368 Filed 6-11-85; 12:21 pm]

BILLING CODE 8010-01-M

federal register

Thursday
June 13, 1985

Part II

Environmental Protection Agency

40 CFR Parts 30 and 33
Asbestos Hazard Abatement (Schools) Program; Deviation From Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL 2847-2]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from 40 CFR 30.308 of its General Regulation for Assistance Programs to permit recipients of assistance under the Asbestos Hazards Abatement (Schools) Program to be reimbursed for certain preagreement costs. Such reimbursement will be limited to those projects on which abatement action is completed after December 31, 1983, as authorized by the Asbestos School Hazard Abatement Act of 1984. This class deviation will permit recipients to be reimbursed for preagreement costs incurred for: Obtaining architectural or engineering services, or other expert advice from qualified abatement contractors, industrial hygienists, or other professional abatement consultants, for asbestos abatement consultation activities, project planning activities, and technical advice; carrying out actual abatement project work; and ensuring that the project is completed in conformance with the project plan, design drawings and specifications.

DATE: The class deviation becomes effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13610 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2847-3]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from 40 CFR Part 33, Subpart G, Protests, of its Procurement Under Assistance Agreements regulation. This deviation will apply only to recipients of financial assistance under EPA's Asbestos Hazard Abatement (Schools) Program (Catalog of Federal Domestic Assistance Number 66.702) for projects where the recipient anticipates issuing a notice to its contractor to proceed with construction in June, July or August 1985. This class deviation provides that procurement protest determinations by recipients will be subject to appeal to EPA only for matters related to noncompetitive practices between firms (40 CFR 33.230(b)(1)) and organizational conflicts of interest (40 CFR 33.230(b)(2)).

DATE: The class deviation became effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 382-5292.

Dated: May 17, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Administrator for Pesticides and Tox... Substances.

[FR Doc. 85-13611 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2847-1]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from the Public Notice provisions of its regulation for Procurement Under Assistance Programs (40 CFR Part 33) for recipients of financial assistance under EPA's Asbestos Hazard Abatement (Schools) Program (Catalog of Federal Domestic Assistance Number 66.702) during Fiscal Year 1985. Deviation from 40 CFR Part 33, Appendix A, paragraphs (b)(3) and (b)(4) permits a recipient to provide as few as 14 calendar days, rather than at least 30 days, between the date when it first provides public notice of a solicitation of bids or requests for proposals and the date by which bids or proposals must be submitted.

DATE: The class deviation became effective on June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, Washington, DC 20460 (202) 382-5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-13612 Filed 6-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 33

[OA-FRL 2846-9]

Asbestos Hazard Abatement (Schools) Program

AGENCY: Environmental Protection Agency.

ACTION: Deviation from rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from the provisions of 40 CFR 33.250, 33.305 and 33.310 of its Procurement Under Assistance

Agreements regulation to permit recipients of assistance agreements for EPA's Asbestos Hazard Abatement (Schools) Program to use the Small Purchase Procurement procedures of 40 CFR Part 33 where appropriate if the aggregate amount involved in any one procurement transaction does not exceed $25,000 including overhead and profit. The deviation from 40 CFR 33.250 extends only to transactions not exceeding $25,000. The deviation is limited to procurements to be funded under agreements entered into during Fiscal Year 1985.

DATE: The class deviation became effective June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Paul F. Wagner, Grants Administration Division (PM–216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5292.

Dated: May 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Dated: May 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–13613 Filed 6–12–85; 8:45 am]

BILLING CODE 6560–50–M

federal register

Thursday
June 13, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Adverse Physical Impact; Permanent Program Performance Standards; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Adverse Physical Impact; Permanent Program Performance Standards

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend that portion of its regulations applicable to the definition of adverse physical impact, and the performance standards pertaining to remining operations. This action is the result of an order by the U.S. District Court for the District of Columbia on December 3, 1984, in *In Re: Permanent Surface Mining Regulation Litigation II.* The amended regulations would (1) remove the definition of adverse physical impact; and (2) remove the limitations imposed by 30 CFR 816.106(b) and 817.106(b). The effect of these changes would be to require all persons conducting remining operations to use all reasonably available spoil in the immediate vicinity of the remining operation to backfill the highwall to the maximum extent technically practical.

DATES:

Written comments: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on August 22, 1985.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on August 15, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern time on August 1, 1985.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of Permit and Environmental Analysis, OSM, Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: (202) 343–1507 Commercial or FTS.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should only address issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should notify Ray Aufmuth, at the address given under **"FOR FURTHER INFORMATION CONTACT"**, either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on July 25, 1985. If no one has contacted Mr. Aufmuth to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth 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 set performance standards to be achieved by different operations. See 30 CFR Part 700 *et seq.*

In the final rule promulgated September 16, 1983 (48 FR 41720), OSM revised various portions of its regulations having to do with the performance standards applicable to remining operations. The effect of these changes was that remining operations which had no adverse physical impact upon a pre-existing highwall were not required to use all reasonably available spoil in the immediate vicinity of the remining operations to backfill the highwall to the maximum extent technically practical.

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 was decided, the Secretary in a joint motion with the environmental plaintiffs (the National Wildlife Federation et al.), agreed to suspend the definition of adverse physical impact as well as certain rules related to the definition. The court entered an order approving the motion on December 3, 1984.

As a result of the court order, 30 CFR 816.106(b), 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 were suspended on January 3, 1985, (50 FR 257).

III. Discussion of Proposed Actions

OSM is now proposing to remove the previously suspended rules. The effect of the proposed rule would be to require all persons conducting remining operations to use all reasonably available spoil in the immediate vicinity of the remining operations to backfill the highwall to the maximum extent technically practicable.

This proposed rule is consistent with the Interior Board of Surface Mining Appeals decision in *Miami Springs Properties* v. *OSM*, 2 IBSMA 399 (Dec. 23, 1980) and *Cedar Coal Co.* v. *OSM*, 1 IBSMA 145 (April 20, 1979). These cases stand for the proposition that in a remining situation, OSM has jurisdiction to require complete elimination of only the portions of highwalls which were adversely affected by the operator. Having reanalyzed the situation, OSM has concluded that an operator who affects any portion of a highwall may properly be required to use all the spoil generated by his remining operation, and all other reasonably available spoil in the vicinity, to eliminate the highwall to the maximum extent technically practical. Such a rule would be more easily implemented than the previous rule, since it would require reclamation of every affected highwall without a threshold determination of adverse affect. Although, the proposal could potentially subject operations to additional reclamation obligations, an operator would not be required to eliminate highwalls completely, where a lack of reasonably available spoil material renders that task techincally impractical.

The office solicits comments with respect to any economic and/or environmental impact that may result from the removal of these rules.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule contains no new information collections requirements to be submitted to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This rule would impose only minor costs on the coal industry, since relatively few operations will be affected. Likewise, the impact upon coal consumers will be negligible.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule would not have a significant economic impact on a substantial number of small entities, and would impact a relatively small number of coal operators, the majority of which would not be small entities. To the extent that such small entities are affected, the economic impact would not be significant.

National Environmental Policy Act

OSM has determined that the proposed rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM EIS-1: Supplement," and that the preparation of additional environmental documents under section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), is not required.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Dated: April 25, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

Accordingly, it is proposed to amend 30 CFR Parts 701, 816 and 817 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

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

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of "Adverse physical impact".

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

§ 816.106 [Amended]

4. Section 816.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

§ 817.106 [Amended]

6. Section 817.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

[FR Doc. 85-14262 Filed 6-12-85; 8:45 am]

BILLING CODE 4310-05-M

federal register

Thursday
June 13, 1985

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1952

Kentucky State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-009]

Kentucky State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

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

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart Q of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Kentucky State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Kentucky plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector, employment at Tennessee Valley Authority facilities and on all military bases within the State, as well as any other properties ceded to the United States government. Federal jurisdiction remains in effect with respect to the Federal government employers and employees.

EFFECTIVE DATE: June 13, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and .4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal Enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for reveiw of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An addtional requirement for approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan state the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Kentucky Plan

On November 27, 1972, Kentucky submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on March 5, 1973, a notice was published in the **Federal Register** (38 FR 5955) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from the United States Steel Corporation. In response to these comments, as well as to OSHA's review of the plan submission, the State made changes in its plan which were discussed in the notice of initial approval. On July 31, 1973, the Assistant Secretary published a notice granting initial approval of the Kentucky plan as a developmental plan under section 18(b) of the Act (38 Fr 20322). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Secretary of the Kentucky Labor Cabinet (formerly the Kentucky Department of Labor) is designated as having responsibility for administering the plan throughout the State. The plan provides for the adoption by Kentucky of standards which are at least as effective as Federal occupational safety and health standards, including emergency temporary standards. The plan requires employers to do everything necessary to protect the life, safety and health of employees and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. The State at on time included coverage of private sector maritime employment

within the scope of its plan. However, effective January 2, 1985, Kentucky indicated its intent to discontinue coverage of the maritime issue. The State continues to provide coverage to State and local government employees engaged in maritime activities. Appeals of citations, penalties and abatement periods are heard by the Kentucky Occupational Safety and Health Review Commission. Decisions of the Review Commission may be appealed to the Franklin Circuit Court.

The notice of initial approval noted one major distinction between the Federal and Kentucky programs. Under the Kentucky program, employees have the right to contest terms and conditions of citations as well as abatement dates whereas Federally employees may only object to the established abatement periods.

The Assistant Secretary's initial approval of the Kentucky developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart Q; 38 FR 20322 (July 31, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending July 31, 1976. These "developmental steps" included amendments to the Kentucky Occupational Safety and Health Act, promulgation of State occupational safety and health standards and program regulations, development of a public employee program, etc. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, field operations manuals, management information system, merit staffing system, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Kentucky subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.234).

During 1974, OSHA entered into an operational status agreement with the State of Kentucky. A Federal Register notice was published on January 8, 1975 (40 FR 1512), announcing the signing of the agreement. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Kentucky plan.

On February 8, 1980, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Kentucky had satisfactorily completed all developmental steps (45 FR 8596). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not ential findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

History of the Benchmarks Issue and the Proposed Revised Benchmarks for Kentucky

The 1980 Benchmarks

Section 18(c)(4) of the Act and 29 CFR 1902.3(h) require State plans to provide a sufficient number of adequately trained enforcement personnel necessary for the enforcement of standards. OSHA implements this requirement by calculating for each State plan State a required staffing level or "benchmark." A 1978 Court of Appeals decision and resulting District Court order place special requirements upon OSHA in determining what staffing levels are appropriate in a particular plan State. Prior to 1978, OSHA's criterion for staffing required that States maintain a level of enforcement staffing "at least as effective as" that which OSHA could provide in the State if no plan were in effect. In 1974, the AFL-CIO challenged this criterion in the U.S. District Court for the District of Columbia. The District Court initially held that OSHA's "at least as effective as" test for State staffing was appropirate under the Act (*AFL-CIO* v. *Brennan*, 390 F. Supp. 972 (D.D.C., 1975)). However, in 1978 the U.S. Court of Appeals for the District of Columbia Circuit reversed this Ruling (*AFL-CIO* v. *Marshall*, 570, F. 2d 1030 (D.C. Cir., 1978)). The Court of Appeals, noting the absence from sections 18(c)(4) and (5) of the Act of the "at least as effective as" language found elsewhere in section 18(c), and calling attention to legislative history anticipating that States would provide the staffing and funding "necessary to do the job," found that the direct State-to-Federal numerical comparisons previously used to calculate benchmarks were inappropirate. Instead, the Court held, the Secretary must establish "criteria that are part of an articulated plan to achieve a fully effective enforcement effort at some point in the foreseeable future." 570 F. 2d. 1042. The case was remanded to the District Court for entry of an order directing the development of benchmarks consistent with the Court of Appeals decision, attainment of which would be required for final approval of State plans under section 18(e). The District Court order, issued December 5, 1978, directed the Secretary *inter alia* to develop benchmarks for "fully effective" staffing taking into account certain factors set forth in the order; to develop for each State a timetable for reaching these benchmarks within five years; and to develop procedures and criteria for future revisions of benchmarks in light of new data, information, or other considerations. The Court retained jurisdiction for period of five years to reveiw action taken by the Secretary in implementing the Order. The case was dismissed in 1984 but the substantive provisions of the Order pertaining to benchmarks remain in effect.

The first benchmarks produced by OSHA under the Court Order were the result of a two-year project culminating in the filing of a Report to the Court on April 25, 1980. The AFL-CIO stipulated at that time that OSHA's Report, including the basic formula for deriving the benchmarks, was a "satisfactory response" to the Court's Order.

The 1980 Report set forth a detailed description of the methods and data sources used in calculating the benchmarks. An important feature of the Report is the basic benchmark formula, under which estimates of the number of each type of inspection (general schedule, mobile, complaint, accident, follow-up, public sector) required annually are added together; the sum of these inspections is then divided by a "utilization factor" (the number of hours an inspector has available to devote to enforcement activities) to produce the required number of inspectors. Supplying the data necessary for each of the "building blocks" in this formula is a complex process. Some of the required

information is essentially objective and performance-related. In 1980, some of this data was derived from State-specific sources but in many instances data reflecting Federal historical experience rather than State experience was used. Since 1980, the methods and assumptions on which the data for calculating these initial benchmarks were based have been the subject of intense examination by OSHA, the National Advisory Committee on Occupational Safety and Health (NACOSH), the U.S. Congress and individual State plan States.

The methodology used in 1980 assumed a need for universal coverage, i.e. general schedule inspections in every single worksite in every industry within a State regardless of hazardousness or past inspection history; such coverage is not required by the 1978 Court Order, is not consistent with the intent of the Occupational Safety and Health Act of 1970, and is not justified in light of the actual experience of OSHA and the States in designing effective enforcement programs. (The majority of serious injuries and illnesses occur within a relatively small subset for the nation's workplaces.) Moreover, in many States the resulting benchmarks were so high that sufficient numbers of qualified personnel were not likely available nationwide to meet the combined States' increased staffing requirements. Finally, important components of a fully effective enforcemen program, such as special emphasis programs for high-hazard local industries, or exemption programs for participation in consultation or voluntary compliance programs, were not factored into the 1980 benchmark formula.

The 1984 Benchmark Revision Process

Based on its own analysis and the concerns raised by NACOSH and the individual States, OSHA determined in 1983 that a comprehensive review and revision of the 1980 benchmarks was warranted. The District Court's December 5, 1978 order in *AFL–CIO* v. *Marshall* directed OSHA, in developing a comprehensive plan for calculating benchmarks, to provide a "procedure for revision of these benchmarks and funding criteria to reflect new data, information or other relevant considerations, including Congressional action in response to benchmarks previously established, which indicates that different levels should be set in a State, several States or all States." In compliance with the Court Order, the 1980 *Report to the Court* described in some detail several possible means of revising benchmarks. These include unilateral revision by the Department of Labor (and indeed the Department stated its intent to initiate such a revision in light of whatever new data or experiences might become available during the first two years of implementation of the new benchmarks (pp. 34–5)), and revision in response to petitions by individual States for change in their benchmarks and State requests for revision based upon State-specific information (p. 22). The revision undertaken by OSHA involved a joint effort by OSHA and the State plan States, and is in effect a hybrid of the two types of revisions just discussed.

Legal authority for the present revision project is derived from the District Court's 1978 order, and therefore the criteria applicable to the revisions are the same as those applicable to the 1980 benchmarks. In particular, the revision process is consistent with the "fully effective" concept announced by the Court of Appeals in *AFL–CIO* v. *Marshall* and incorporated in the 1978 District Court order. Comparison of Federal and State staffing patterns—the "at least as effective as" methodology rejected by the Court of Appeals—has been carefully avoided at all steps of the process. Instead, the focus of the revision process has been to design and construct a realistic and reliable measure of the enforcement needs of each State.

The 1978 Court Order requires that benchmarks be determined on the basis of the "best information and techniques currently available," and that OSHA provide an explanation of the assumptions, techniques and sources used in calculating them. Factors set forth in the order as required to be considered include the number of employers and employees in the State; the anticipated number of accident, complaint, and follow-up inspections required; and the number of inspections an inspector can reasonably be required to perform. The Court Order provides relatively broad discretion and requires extensive application of professional judgement by OSHA in evaluating the need for general schedule inspections within a State, requiring OSHA to determine the number of general inspections that should be conducted annually "to provide proper coverage" both in safety and health. In determining an appropriate annual number of general schedule safety inspections, the Court Order specifies that consideration is required of the State's ability to allocate inspectors efficiently according to a scheduling system which analyzes past injury experience to ascertain those employers or groups of employers most likely to have hazards which could be eliminated by inspection. In health similar consideration must be given to the State's ability to allocate inspectors based on the potency and toxicity of substances in use in the State, the extent of employee exposure to and use of toxic substances by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection.

The Benchmark Formula

In order to effect a comprehensive review and revision of the benchmarks, in August, 1983, the State plan designees formed a Benchmark Taskgroup to work with OSHA. The Taskgroup consisted of the members of the Board of Directors of the Occupational Safety and Health State Plans Association (OSHSPA) or their representatives from five States: Hawaii, Wyoming, Michigan, Washington and South Carolina.

From its inception, the Taskgroup in accord with the terms of the 1980 Report agreed that the basic benchmark formula used in 1980 was conceptually sound. However, certain modifications to the data inputs used in 1980 were necessary to incorporate, wherever available, State-specific data and to build flexibility into the formula to accommodate differences among States. The Taskgroup decided on an approach that established initial general schedule fixed site safety and health inspection universes for each State that would provide proper program coverage for high hazard establishments within a State. These universes would be calculated in the same manner for all States but would be based on State-specific data. For safety, the Taskgroup chose an initial general schedule inspection universe of large establishments (greater than ten employees) in private sector manufacturing Standard Industrial Classifications (SICs) whose State-specific Lost Workday Case Injury Rate (LWCIR) as determined by the Bureau of Labor Statistics Annual Survey of Occupational Injuries and Illnesses was higher than the overall State LWCIR. These establishments were to be inspected biennially. For health, the Taskgroup chose an initial general schedule inspection universe of large establishments (greater than ten employees) with potential for exposure to health hazards based on a ranking system incorporating the most current available data on industrial exposures to regulated substances (the National Occupational Hazards Survey (NOHS) published in 1977), and number of

workers exposed to such health hazards in each State's industries. These establishments were to be inspected once every three years. After the establishment of these initial fixed site inspection universes, the universes could be adjusted by each State in accordance with a number of different adjustment factors (additions and subtractions), the burden being on each State to justify the adjustments it chose to make using State-specific data and rationales. However, in no case could the State reduce the absolute size of the initial universe.

OSHA believes this approach is appropriate because it is based on uniform methodology yet incorporates State-specific data and policies to reflect differences among the States. Because of the wide variety among States in program experience, policies, and data used to identify hazardous establishments, the adjustment factors are defined in a manner sufficiently flexible to accommodate this diversity and ensure that the benchmarks accurately reflect the best available information from each State. This approach also allows States to allocate sufficient staff for additional special program emphases beyond those required for proper program coverage, that are responsive to local needs and philosophies.

All other components of the proposed benchmark formula are as they were in 1980 except that accident inspections are added as a separately calculated component rather than being subsumed within general schedule inspections. The major difference is that the computation of each component is based on State-specific data rather than Federal averages. The benchmarks are developed in terms of full-time equivalent Safety and Health Compliance Personnel, as the Taskgroup recognized that many inspection functions could be performed by qualified technicians and cross-trained personnel. (Supervisory personnel, except to the extent that they spend time doing actual field inspections, cannot be used to fulfill the benchmark requirements.)

The Benchmark Timetable

As provided by the 1978 Court Order, OSHA included in the 1980 *Report to the Court*, a schedule which required States, not yet meeting the benchmarks, to allocate additional staff each year equivalent to 20% of the difference between existing staff levels and benckmark levels (in effect, a mandatory five-year timetable for reaching the "fully effective" staffing levels (pp. 30–32)). However, as a matter of practical necessity, the 1980 Report also provided that States were required to complete an annual "benchmark step" only when additional funds were made available by Congress to fund the Federal share of such staffing increase. Absent such additional funding, the timetable would in effect be recalculated and the time for full implementation of the benchmarks proportionately delayed. Since 1980, there has been no increase in the amount of funding made available by Congress for State staff, and thus the five-year timetable projected in 1980 never began to run. The above described provisions of the 1980 Report will continue to apply to any approved revisions to the benchmarks. States which do not meet the revised benchmarks will still be required to move toward benchmark levels in annual increments amounting to 20% of the difference between existing staff and the revised benchmarks, subject to the availability of matching Federal funds.

Proposed Revised Benchmarks for Kentucky

Pursuant to the initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Kentucky reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. In September 1984 Kentucky in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Kentucky (staff of 35 safety and 53 health compliance officers). This reassessment resulted in a proposal to OSHA, of a revised compliance staffing benchmark of 23 safety and 14 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Kentucky and the resultant eligibility of the Kentucky State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2454). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Kentucky plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Kentucky operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Kentucky plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 3–4). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

The January 16 **Federal Register** also contained notice of the Occupational Safety and Health Administration's proposal to approve revised compliance staffing benchmarks for Kentucky. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Kentucky was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T–009), Kentucky's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region IV Office in Atlanta, Georgia, and the office of the Kentucky Labor Cabinet in Frankfort. Summaries of the January 16 proposal, with an invitation for public

comments were published in Kentucky on/or before January 26, 1985 (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO) written comments and views regarding the Kentucky plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Five comments were received in response to these notices. All five comments were from organized labor. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Kentucky plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Kentucky.

In response to the January 16 **Federal Register** notice, OSHA received comments from the Kentucky State Building and Construction Trades Council—AFL–CIO, Jerry Hammond, Executive Secretary (Ex. 4–2); United Steelworkers of America—AFL–CIO (Local No. 1865, USWA), Garry E. Massie, President, and Homer B. Moore, Jr., Chairman, Safety Committee (Ex. 4–3); Ashland Area Labor Council—AFL–CIO, Bob Kirtz, President (Ex. 4–4); American Federation of Labor Congress and Industrial Organizations (AFL–CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Ex. 4–5); United Steelworkers of America, AFL–CIO (USWA), Mary Win O' Brien, Assistant General Counsel (Ex. 4–6). Secretary of the Kentucky Labor Cabinet, John C. Wells, responded to the public comments (Ex. 4–7).

Three State labor organizations, affiliated with the AFL–CIO, Kentucky State Building and Construction Trades Council; United Steelworkers of America (Local No. 1865, USWA); and Ashland Area Labor Council, expressed their general support for approval on the grounds of State competence, responsiveness, and specific knowledge of local conditions (Exs. 4–2; 4–3 and 4–4). The State Building and Construction Trades Council praised the Kentucky program for its efficiency and effectiveness. Local No. 1865, USWA, commented on the Kentucky program's success in tailoring its efforts to fit the needs of Kentucky workers. In addition, the USWA local union supported approval of Kentucky's proposed revised benchmarks as meeting or exceeding the requirements of the Court Order and providing the staff necessary for an effective program in Kentucky. The Ashland Area Labor Council expressed support of Kentucky's efforts and indicated that the workers of Kentucky will be better served under State enforcement authority.

The United Steelworkers of America, commented extensively on the benchmark revision process with particular reference to Kentucky's proposed revision. Although the USWA opposed approval of the revised benchmarks, they nevertheless indicated their support of Local No. 1865's, USWA, conclusion that the actual operation of the State Program is considered effective.

The AFL–CIO indicated opposition to approval of the proposed revised benchmarks for Kentucky and therefore opposed the granting of final State plan approval. Some of the AFL-CIO's comments were directed toward OSHA's system for monitoring and evaluation of State plans and the requirements that a State must meet to be eligible for final approval.

The evaluation of the Kentucky plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL–CIO expressed concern that Federal OSHA's monitoring system with its reliance on statistical indicators fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made.

The AFL–CIO also commented on specific State performance issues. These comments are addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Kentucky State designee, John C. Wells, responded to the concerns expressed by the AFL–CIO and the United Steelworkers on both the benchmark issue and State-specific performance.

The majority of comments from the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the United Steelworkers of America (USWA or "Steelworkers") dealt with their objections to the benchmark revision process. While a portion of these comments specifically addressed the Kentucky benchmarks, their principal focus of concern was the formula developed by OSHA and the Benchmark Taskforce as described in its 1984 Report for determining the proposed revised benchmarks.

At several points in their comments both the AFL–CIO and the Steelworkers criticized the benchmark formula as permitting the States too much discretion in determining which industries, in addition to those in the initial universe, should be included in the State's total inspection universe. This discretion, the unions assert, may result in coverage which is "unequal" and "diverse" from State to State (Ex. 4–5; 4–6). The formula used in deriving the revised benchmarks properly requires all States to assume a uniform workload (coverage of the initial universe is required of all States) while at the same time permitting States which can demonstrate special enforcement needs to address those needs. It must be emphasized that the 1984 formula does not, as the comments assert, leave the States free to extend or constrict basic universal coverage at random. All proposed adjustments to initial universe coverage must be justified by the State submitting the proposal for OSHA's approval, and the absolute size of the initial universe may not be reduced (1984 Benchmark Report, pp. 26, 36). The formula does indeed provide a uniform methodology for determining proper program coverage for specific industries within a State, by requiring use of objective data such as State-specific injury rates or the number and type of violations found by the State in previous inspections of that industry.

Such a State-by-State adjustment procedure is not a new idea in the benchmark proceedings and, in fact, the need for a State specific adjustment was pointed out by OSHA in the 1980 Report to the Court (*1980 Benchmark Report*, pp. 35–37). The adjustment procedure

used in the present benchmark revision procedure is entirely consistent with the District Court's order in *AFL–CIO* v. *Marshall* (Ex. 2). Indeed, the order provides that different levels may be set for "a State, some States, or all States" (p. 3). The failure of the earlier benchmark formula to accommodate the special program needs of States or to take into account State-specific data clearly demonstrating such needs has repeatedly been criticized and was a major reason for OSHA's decision to undertake the present revision. The unions object that under the 1984 formula an industry group may be included in the routine inspection universe in one State but excluded in another. However, States differ not only in industrial mix but, within a given SIC-code, States may differ widely in average establishment size, type of processes used, age of facilities, and a host of other details which are not reflected in a worksite's SIC-code designation. As a result, the injury/illness experience in an industry may also vary from State to State. Such differences are, in OSHA's judgement, a valid reason for relying on State-specific data whenever available in determining the makings of a State's general schedule inspection universe. The makings of each State's universe necessarily will vary but in OSHA's view, identical coverage is not a prime criterion under the 1980 District Court order. Instead, the order requires that benchmarks be based on "the best currently available information and techniques" and must take into "consideration a State's ability to allocate inspectors efficiently according to a scheduling system which analyzes past injury experience to ascertain those employers or groups of employers most likely to have hazards which could be eliminated by inspection" (*Order*, pp. 1–2).

The AFL–CIO criticizes the initial inspection universe posited by the 1984 benchmark formula as providing inadequate coverage and as being a "radical alteration of earlier methods of calculating benchmarks" (AFL–CIO, pp. 3–5). The basic concept used in the present revision process—determination of a uniform "initial universe" for each State, with subsequent State-specific adjustments to reflect specific conditions and needs shown to exist in that State—is indeed a departure from the 1980 methodology. The changes in benchmark methodology, however, reflect the increased sophistication with which occupational safety and health professionals—whether Federal or State—approach the task of scheduling workplaces for inspection. An assumption widely held in the 1970's was that compliance with occupational safety and health standards could be attained and illness and injury rates reduced by conducting general schedule inspections at worksites randomly selected from as large as possible a universe, without regard to the relative hazardousness of particular workplaces or industries or the likelihood that violations might be found or corrected as a result of a compliance inspection. By the early 1980's, however, the concept of universal coverage has largely been replaced as a basis for planning scheduled inspections for several reasons. Years of experience in managing safety and health enforcement programs, both State and Federal, have shown that inspections of worksites in low hazard categories frequently achieve no meaningful results; typically, fewer serious hazards are found and corrected than would have been the case in a workplace shown to be in a higher-hazard category. OSHA, as well as most State programs has rejected this "universal coverage" concept in favor of far more precise targeting systems which permit general schedule inspection resources to be devoted to workplaces where an inspection is most likely to result in the correction of serious hazards. The trend toward increased selectivity in enforcement scheduling is appropriately reflected in the 1984 benchmark methodology. Identifying for each State an initial universe of high-hazard industries where regular scheduled inspections should be conducted is a necessary and rational first step in determining the enforcement workload which the State plan must undertake.

But it is quite erroneous to assume, as the comments seem to do, that exclusion of an industry group from this baseline inspection-planning universe means that no inspection can or will be conducted therein. First, decisions reached or assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in scheduling specific employers for an enforcement visit. The initial universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards. (See *1980 Report to the Court*, pp. 27–28; *1984 Benchmark Report*, pp. 17–18.) Second, the 1984 benchmark formula specifically provides for "add-ins" to the initial inspection universe where injury rates or prior enforcement experience in an industrial category in the State demonstrate that general schedule coverage would be appropriate (*1984 Benchmark Report*, pp. 26–28). Finally, it should be remembered that the general schedule inspection universe relates only to routine inspection. All State plan States retain the responsibility for responding to hazards identified by employees who file safety and health complaints, as a result of accidents, etc., without regard to whether or not the workplace is subject to general schedule inspections.

The AFL–CIO and Steelworker comments express the similar concern that revised benchmarks are in most cases lower than the staffing levels allocated by the States in 1980 as well as those projected by the 1980 benchmarks and that the revised benchmarks fail to provide a "fully effective" enforcement program as that term was used in the District of Columbia Circuit's decision in *AFL–CIO* v. *Marshall*. The Court of Appeals' decision provides no specific criteria against which any State's benchmarks can be measured. The District Court's order on remand, however, provides general guidance on procedures to be used and factors which must be considered in developing benchmarks. OSHA conducted the 1984 revision process according to the procedures set forth in the District Court order, and proper consideration was given to the factors identified in that order as being relevant.

The order directed OSHA to take into consideration such factors as the number of employers and employees in a State, the number of hazardous industries in a State, and the anticipated number of accident, complaint and follow-up inspections required. All of the factors enumerated in the order have been addressed as described in the *1984 Benchmark Report*.

The union comments imply that because in many cases the revised benchmarks are lower they are not "fully effective" within the meaning of the District Court's order. However, the order does not assume or require that the initial benchmarks or any revision thereto provide a comparative increase over past levels. The sufficiency of the revised benchmarks to provide proper coverage cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement staffing levels. Such direct numerical comparison of staffing levels is no more valid than was the comparison of State to Federal staffing under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the

Court was, in sum, to measure the workload assumed by each State plan and to determine, using the best available information and techniques, but avoiding direct numerical comparison, the staffing needed for fully effective coverage. During the revision process, scrutiny of each State's injury and illness data, industrial demography and enforcement experience has been far more detailed than was the case in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting which concentrates resources in the relatively small number of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic staffing requirements resulting from the 1984 revision process.

Both the AFL–CIO and the Steelworkers were critical of the formula's use of the National Occupational Hazards Survey (NOHS) in determining the initial health general schedule inspection universe. Their comments noted that OSHA no longer uses NOHS data for its health targeting program and that as a result certain industries they believe to be hazardous were omitted from the States' initial universes. OSHA currently schedules health inspections based on previous Federal inspection experience as recorded in OSHA's Integrated Management Information System. This system can accurately assess Federal experience but such data does not reflect the States' experience and is, therefore, not appropriate for use in the States' benchmark revision process. The NOHS was and still is the most current available national data on industrial exposures to regulated substances and on the number of workers exposed to such health hazards in each State's industries. The NOHS data was used in developing the 1980 benchmark staffing levels for health with the concurrence of the AFL–CIO.

Certain other factors which the AFL–CIO and Steelworkers assert should have been included in the revision process are in fact outside the scope of the benchmark requirements set forth by the District Court. The AFL–CIO asserts benchmark levels should include staffing for "whole new emerging areas of occupational health concern," musculoskeletal injuries caused by poor job design, and clean-up of hazardous waste dumps (*AFL–CIO*, pp. 6–9; see also *USWA*, p. 3). The objective of the revision process was to make a reasonable calculation of the workload to be undertaken by a State to provide proper program coverage under its State plan. It would be difficult if not impossible to gauge what, if any, effect on inspection resources might be created by future health standards. In OSHA's experience, newly promulgated Federal standards have never required additional Federal compliance staff, only supplementary training of existing staff. In any case, the Court order does not require, as part of the benchmark process, consideration of health issues for which there are as yet no standards for the States to enforce.

Certain of the union comments deal with issues specific to Kentucky's benchmarks. John C. Wells, Secretary of the Kentucky Labor Cabinet, responded to many of these comments. For example, the Steelworkers questioned the exclusion of 309 low-hazard establishments from the initial health universe based on the State's experience of finding no serious violations in such industries, in light of the 18(e) Evaluation Report's finding that Kentucky found a low percentage of serious violations due to a procedural error. The State, in its response, points out that the procedural problem in health was not one of improperly classifying violations but of grouping them and thus, the State experience of finding no serious health violations in these industries is valid.

The AFL–CIO questioned the exclusion of certain industries from Kentucky's initial general schedule inspection universe for safety and health. The union asserts that injury rates above the State average in some, though not all, of those industries as well as the presence of specific health hazards, should make general schedule safety and health inspections appropriate. OSHA believes that Kentucky has appropriately analyzed State-specific data to ascertain what groups of employers are or are not likely to have hazards which can be eliminated by inspections. In safety, the few industries with injury rates above the State average are in non-manufacturing. Studies based on three years of State enforcement data show that the majority of injuries incurred in those industries involved causes such as motor vehicle collisions, or sprains and strains resulting from lifting or overexertion, and hence were unlikely to involve violations of OSHA standards. In health, Kentucky has found that inclusion in the initial universe of the various industries mentioned in the comments would be unnecessary. The majority of these industries are included in the safety universe and will receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health hazards. Where complex health hazards are identified, a health inspection would result. Moreover in these industry groups, like all workplaces covered by the Kentucky plan, the State will respond to employee complaints of unsafe or unhealthful conditions. OSHA concurs with the State's findings that inclusion of these industries in the initial universe is not required for proper program coverage.

The AFL–CIO asserts that Kentucky's allocation of enforcement resources to health inspections in the public sector and to the construction industry, because calculated in accordance with the State actual enforcement history in those areas, is inadequate. The union argues that these industries have not been adequately covered in the past, but provides no data in support of that conclusion. Kentucky has submitted State-specific data which, although admittedly not definitive, show that illness rates in construction and in public employment are extremely low, and thus the best available information does not suggest that additional emphasis beyond the State's present enforcement levels is required for proper coverage. Moreover, actual coverage of the industries is somewhat more extensive than the comments assume. In construction, for example, the State actually responds to EPA referrals regarding asbestos, and cross-trained safety compliance officers make referrals of potential health problems. OSHA finds that the percent of the enforcement resources allocated to construction and public sector worksites is sufficient for fully effective program coverage in Kentucky.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Kentucky is lower than the staffing levels allocated by the State in 1980 or projected for it by the benchmarks issued by OSHA in its first effort to implement the *AFL–CIO* v. *Marshall* Court Order. As indicated earlier, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels but rather, whether, using the best available information and techniques, they provide the staffing levels needed for a fully effective program. In addition, Kentucky indicates in its response, the

more efficient scheduling of its current staff has resulted in a level of inspections equivalent to that produced by a somewhat larger staff in 1980 as well as an increase in the number of serious violations cited.

For these reasons, and in light of other comments by groups and individuals more directly affected and knowledgeable about safety and health enforcement needs in Kentucky, OSHA believes application of the current benchmark formula for Kentucky has resulted in staffing levels which result in fully effective enforcement in the State of Kentucky.

Findings and Conclusions

Kentucky Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Kentucky, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Kentucky. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and carefully considered the public comments received with regard to this proposal, and determined that compliance staffing levels of 23 safety and 14 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Kentucky Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Kentucky State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) Standards

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Kentucky State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Kentucky plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the January 16, 1985 **Federal Register** notice, Kentucky has generally adopted standards which are identical to Federal standards and additionally has adopted State standards for conditions, not covered by Federal standards, such as Changing and Charging Automotive Batteries, Receiving and Unloading Bulk Hazardous Liquids. Kentucky has adopted a Hazard Communication Standard identical to the Federal.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Kentucky likewise adopts standards interpretations, which are identical to Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Kentucky.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Kentucky program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) Variances

A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Kentucky State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the January 16 notice, Kentucky had no requests for permanent or temporary variances during the evaluation period. However, past years' experience indicates that the State's procedures were properly applied when granting permanent and temporary variances.

Accordingly, OSHA finds that the Kentucky program effectively grants variances from its occupational safety and health standards.

(3) Enforcement.

Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Kentucky law (KRS 338.031 and 338.061) and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in

the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985 **Federal Register** notice Kentucky follows a policy of responding to all employee complaints by conducting inspections. Data contained in the 18(e) Evaluation Report indicates that 99.3% of the safety complaints and 88.9% of the health complaints resulted in inspections (Evaluation Report, p. 8). The AFL–CIO in its written comments indicates its agreement that the State effectively responds to complaints (Ex. 4–5).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). The 18(e) Evaluation Report indicates that 99.4% of State programmed safety and 89.5% of programmed health (general schedule) inspections during October 1982 through March 1984 were conducted in high-hazard industries which exceeds the Federal average and therefore compares favorably with Federal performance. During the evaluation period Kentucky utilized a State-developed high hazard list to schedule programmed inspections. Kentucky's State-developed list was based on both lost workday case rates and lost workday rates (Ex. 2–11). The State does not conduct records inspections, a policy with which the AFL–CIO expresses agreement in its written comments (Ex. 4–5).

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. The 18(e) Evaluation Report indicates that employee representatives accompanied Kentucky's compliance officers in 15% of the State's initial inspections. There was no data available on the number of employees interviewed. However, previous evaluation reports show that the State utilizes employee interviews extensively and OSHA has concluded that employee representation is properly provided in State inspections.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices, (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Kentucky requires that a poster, which was previously approved by OSHA (41 FR 21774), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. The 18(e) Evaluation Report indicates posting violations were cited in 219 inspections (Evaluation Report, p. 10). Federal OSHA evaluation concluded that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Kentucky law and regulations provide for discrimination protection which is at least as effective as the Federal. The State received and investigated 20 complaints during the evaluation period. The State settled administratively the three complaints found meritorious. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results by the State was 90 days. Federal evaluation of the cases indicates that the State action was satisfactory (18(e) Evaluation Report, p. 18).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations, (29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were 7 imminent danger situations identified and that the situations were properly handled (Evaluation Report, p. 8). No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets.

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 338.101 of the Kentucky Occupational Safety and Health Act authorizes the Labor Cabinet Secretary to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. In addition, § 338.101(2) authorizes the Labor Cabinet Secretary to petition the Frankin Circuit Court for an order to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The Kentucky law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice proedures. The 18(e) Evaluation Report shows that Kentucky received 41 denials of entry and warrants were obtained for 38 of these refusals. The 18(e) Evaluation Report shows that there were five instances of advance notice. The State's use of its procedures was found to be proper (Evaluation Report, p. 10).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and emplyees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Kentucky plan through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the

Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure to abate notices and appropriate penalties (29 CFR 1902.37(b)(13)). Comparison of Federal and State data, as discussed in the 18(e) Evaluation Report shows that the State finds a comparable number of violations per initial inspection (1.4). Additionally, data showed State percentages of not-in-compliance programmed inspections for safety (51.4%) and health (65.4%) were comparable to or exceeded Federal OSHA (Evaluation Report, p.6). The AFL–CIO in its written comments asserted that Kentucky may not be adequately identifying and citing hazards as demonstrated by the lower percentage of serious violations being cited (Ex. 4–5). The report showed that Kentucky's procedures are identical to the Federal and concluded that the lower percentage of serious violations cited resulted from a difference in interpretation of established procedures for classifying violations. As also indicated in the report, the State agreed to change its interpretation to more closely mirror Federal OSHA's interpretations. As a result of this reinterpretation, the report indicates that the State's percentages of serious violations cited have increased (safety 23%, health 13.7%) and are now much closer to Federal performance. In addition, monitoring has indicated that the State does effectively identify and cite violations, and that inspectors recognize and properly classify violations (Evaluation Report, p. 12). Kentucky, in its written response to the AFL–CIO's comments, also indicates that the issue is not the identification and abatement of hazards, but rather a procedural difference which has now been eliminated. The State points out that more recently available data show Kentucky's percentage of serious violations in health to be within the acceptable ranges.

The AFL–CIO's written comments suggest that a shortage of adequate staff is a factor in the State's longer time from inspection to issuance of citation and proposed penalty (22 days for safety; 35 days for health) (Ex. 4–5). The 18(e) Evaluation Report attributed the longer citation issuance time to factors such as mail delays due to the fact that compliance officers work out of their homes and citations must be mailed to the office for processing and the practice of delaying issuance of all citations until the more complex ones are completed. Kentucky in its written response expresses agreement with Federal OSHA's evaluation as mentioned above, and indicates that the State's participation in OSHA's new Integrated Management Information System (IMIS) will eventually help reduce lapse time in citation processing. Kentucky concludes that although each of the aforementioned issues has some bearing on its lapse time, the size of its staff, as purported by the AFL–CIO, has nearly no bearing on this issue. The 18(e) Evaluation Report concludes that the States' overall performance relative to this area is satisfactory and as effective as the Federal OSHA program (p. 19).

Neither the data nor any comments suggest that the State has any problem in adequately documenting inspections to support citations.

During the 18(e) evaluation period penalty levels for serious violations were higher than Federal ($289 safety, $374 health). Kentucky conducts a higher proportion of follow-up inspections than does Federal OSHA (20% of not-in-compliance inspections). Abatement periods are generally shorter than Federal (10.6 days for safety, 16.9 days for health). Kentucky attempts to document abatement within 30 days for all serious, willful and repeat violations. The 18(e) Evaluation Report indicates acceptable performance. (pp. 12–14).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Kentucky's procedures for contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding and are substantially identical to the Federal procedures with the exception of the expanded employee right to contest citations as well as abatement dates. Appeals of citations, penalties and abatement periods are heard by the Kentucky Occupational Safety and Health Review Commission and may be further appealed to the Franklin Circuit Court. Sixty-three inspections during October 1982 through March 1984 resulted in contests. OSHA evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. 16).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the Kentucky plan effectively review contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Kentucky plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program

Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Kentucky's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During the evaluation period, the State conducted 18 inspections in the public sector and cited 24 violations with appropriate penalty for serious violations. The proportion of inspections dedicated to the public sector (.5% of total inspections during the evaluation period) was considered appropriate to the needs of public employees (Evaluation Report, p. 5). Injury and illness rates in the public sector in Kentucky are much lower than those in

the private sector (6.3 combined State and local government all case rate and 3.0 combined State and local government lost workday case rate in 1982). Kentucky's response indicates that published data show public sector injury/illness rates in Kentucky are "not now nor have they ever been higher than the private sector rates." The AFL–CIO's comment that the rates in the public sector were higher than those for the private sector is in error (Ex. 4–5).

Because the State treats the public sector in the same manner as the private sector, as evidence by its written procedures, which are applicable to all covered employees, public or private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Kentucky program meets the criterion in 29 CFR 1902.3(j).

(5) Staffing and Resources

Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Kentucky has committed itself to funding the State share of salaries for 24 safety inspectors and 14 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels exceed the revised benchmarks proposed for Kentucky.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Kentucky (45 FR 8596) all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S.C Civil Service Commission.

The State provides continuing training for its staff. The 18(e) Evaluation Report noted that the State provided formal training for all professional employees (Evaluation Report, p. 4).

Because Kentucky has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Kentucky plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Kentucky plan was funded at $3,953,269 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Kentucky's funding appears sufficient in absolute terms; moreover, the State compares favorably to Federal OSHA with respect to expenditures per covered employee (Evaluation Report, p. 19). On this basis, OSHA finds Kentucky has provided sufficient funding for the various activities carried out under the plan.

(6) Records and Reports

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Kentucky's employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Kentucky has met the requirements of sections 18(c)(7) and (8) of the Act on employer and State reports to the Secretary.

(7) Voluntary Compliance Program

A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the 18(e) evaluation period, Kentucky provided training to 2390 employers and supervisors and 6535 employees. Of the employees trained, 56% were in high hazard industries (Evaluation Report, p. 4).

Kentucky provides public and private sector on-site consultative services to employers under its approved State plan. During the 18(e) evaluation period, 368 on-site consultative visits were conducted in Kentucky.

Accordingly, OSHA finds that Kentucky has established and is administering an effective voluntary compliance program.

(8) Injury and Illness Statistics

As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics Annual Occupational Safety and Health Survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)). As noted in the 18(e) Evaluation Report, Kentucky's reportable injury and illness rates in absolute terms are slightly higher than Federal averages. It should be noted, however, that this comparative difference existed at the time of the inception of the Kentucky plan in 1973. The overall trend in worker safety and health injury and illness rates since the State began enforcement of its plan compares favorably to that under the Federal program. For example, from 1973 through 1982, the injury and illness all case rate declined 27% for all industry, and 28.6% for manufacturing employment.

The AFL–CIO's comments expressed concern regarding Kentucky's higher injury and illness all case rate and lost workday case rate in manufacturing and noted that the decline in the State's all industry injury and illness all case rates has been slower than the national average (Ex. 4–5). While the rates do slightly exceed Federal rates when directly compared, a decreasing trend is evident as noted above.

As noted in the 18(e) Evaluation Report, the manufacturing lost workday case incidence rate did not decrease quite as fast as the Federal rate for the reporting period. However, the report explained that within the manufacturing sector, employment decreased more in industries not considered high hazard, than it did in high-hazard manufacturing. Thus, proportionately, more workers were employed in the highly hazardous industries than before, slowing the generally observed effect of reduced employment in lowering rates of injury and illness (Evaluation Report, p. 20).

Kentucky, in its response to the AFL–CIO's comments, noted that the mix of industries within a State should be considered when making direct comparison among jurisdictions; that the State's manufacturing rates exceeded the national rates even prior to the initiation of the State plan; and that the more recently available 1983 data show a State decline exceeding the national

rates in both all industry and manufacturing.

Considering the State's overall substantial decline in injury and illness rates, OSHA finds a favorable comparison between Kentucky's trends in injury and illness statistics and those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Kentucky meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) that the Kentucky State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR 1902. Therefore, the revised compliance staffing benchmarks of 23 safety and 14 health are approved and the Kentucky State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective June 13, 1985.

Under this 18(e) determination, Kentucky will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Kentucky must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Kentucky plan terminates OSHA authority for Federal enforcement of its standards in Kentucky, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Kentucky plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in December 1974.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private sector maritime employment, employments at Tennessee Valley Authority facilities and on all military bases, since these issues are excluded from coverage under the Kentucky plan. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart Q of Part 1952 to reflect the final approval of the Kentucky plan.

A new § 1952.233, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Kentucky.

A new § 1952.234, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new section contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.235, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.232, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on December 30, 1974. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Kentucky, and the Operational Status Agreement is no longer in effect. § 1952.235 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart Q has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.230, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.236.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Kentucky under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C. this 13th day of June 1985.

Robert A. Rowland,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart Q of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

2. Section 1952.230 is amended by revising the heading to read:

§ 1952.230 Description of the plan as initially approved.

§§ 1952.231, 1952.232, 1952.233, and 1952.234 [Redesignated as 1952.236, 1952.235, 1952.231, and 1952.232 Respectively]

3. Section 1952.231 Redesignated as § 1952.236

4. Section 1952.232 Redesignated as § 1952.235

5. Section 1952.233 Redesignated as § 1952.231

6. Section 1952.234 Redesignated as § 1952.232

7. The Table of contents for Part 1952, Subpart Q is revised to read as follows:

Subpart Q—Kentucky

Sec.

8. New §§ 1952.233 and 1952.234 are added to read as follows:

§ 1952.233 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

§ 1952.234 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO* v. *Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Kentucky State plan for a period of at least one year following certification of completion of developmental steps (45 FR 8596). Based on the 18(e) Effectiveness Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Kentucky's occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Kentucky plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 13, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Kentucky except for private sector maritime, employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the United States Government.

(c) Kentucky is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

9. Newly redesignated §§ 1952.235 and 1952.236 are revised to read as follows:

§ 1952.235 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Kentucky plan under section 18(e) of the Act, effective June

13, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Kentucky plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(b) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments), employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the United States Government. Federal jurisdication is also retained with respect to Federal government employers and employees. In addition, any hazards, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdication for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Kentucky State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.236 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30309; and Office of the Secretary, Kentucky Labor Cabinet, U.S. Highway 127 South, Frankfort, Kentucky 40601.

[FR Doc. 85-13534 Filed 6-12-85; 8:45 am]

BILLING CODE 4510-26-M

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