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Thursday
June 27, 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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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 425, 431 and 432

[Docket No. 2465S]

Crop Insurance Regulations; Soybean, Grain Sorghum, Cotton, Peanut and Corn

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby confirms as final the December 17, 1984, file date established by publication of an interim rule on December 7, 1984, at 49 FR 47821 for the Soybean, Grain Sorghum, Cotton, Peanut and Corn Crop Insurance regulations, effective for the 1985 crop year only. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops and to adopt the interim rule as published. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 27, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On December 7, 1984, FCIC published an interim rule, effective upon publication in the **Federal Register** at 49 FR 47821, to amend the Soybean, Grain Sorghum, Cotton, Peanut, and Corn Crop Insurance Regulations, effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crops.

The public was given 60 days in which to submit written comments, data, and opinions on this rule, but none were received. Therefore, the interim rule is hereby adopted as final, effective for the 1985 crop year only.

List of Subjects in 7 CFR Parts 420, 421, 425, 431, and 432

Crop insurance, Grain sorghum, Cotton, Peanuts, Soybean, Corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Interim Rule published in the **Federal Register** on December 7, 1984, at 49 FR 47821 is hereby adopted as final.

Done in Washington, D.C., on March 8, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15482 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 427

[Docket No. 0016A]

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the cancellation, termination and filing dates in certain counties; (4) clarifying certain sections of the policy with regard to mechanically seeded acreage and availability of the Late Planting Agreement Option; and (5) adding a definition of "Loss ratio." The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 28, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action

constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must, by contract, be on file by June 30, 1985, good cause is shown for making this rule effective in less than 30 days.

On Friday, March 29, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 12560, revising and reissuing the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule is hereby adopted as final.

The principal changes in the oat policy are:

1. Section 2.d.(5)—Add a stipulation to the policy language to clarify that the Late Planting Agreement Option is available only for use on spring-planted crops.

2. Section 2.d.(7)—Add a section to clarify the insurability of airplane or broadcast seeded acreage in some instances.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. Section 9.d.—Change the method of computing indemnities when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. Section 15.e.—Change cancellation and termination dates from August 31 to September 30 for New Mexico except Taos County; Oklahoma and Texas, to more closely conform to harvest in those areas.

8. Section 16.—Change the filing date for contract changes from May 31 to June 30 preceding the cancellation date for all counties other than those with an April 15 cancellation date, to coincide with the extension of cancellation dates.

9. Section 17.g.—Add a definition for the term "Loss Ratio" to clarify its use in section 5.

List of Subjects in 7 CFR Part 427

Crop insurance, Oat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1986 and succeeding crop years, to read as follows:

PART 427—OAT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 427.1 Availability of oat crop insurance.

Insurance shall be offered under the provisions of this subpart on oats in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

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

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

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

§ 427.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 427.4 Creditors.

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

§ 427.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the oat insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 427.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the oat crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 427.7 The application and policy.

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

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

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of an oat contract issued under such prior ragulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Oat Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Oat—Crop Insurance Policy

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

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

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

Terms and Conditions

1. Causes of loss.

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

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

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

(2) The failure to follow recognized good oat farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be oats planted for harvest as grain, oats planted in the same manner for harvest as silage or hay, and grain mixtures in which oats are the predominant grain, grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

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

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

d. We do not insure any acreage:

(1) Planted with flax or vetch;

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

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

(4) Which is destroyed, it is practical to replant to oats, and such acreage is not replanted;

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

(6) Of volunteer oats;

(7) On which the seed has not been mechanically incorporated into the soil unless provided for by the actuarial table; or

(8) Planted to a type or variety of oats not established as adapted to the area or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice:

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

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

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

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

3. Report of acreage, share, and practice.

You must report on our form:

a. all the acreage of oats in the county in which you have a share;

b. the practice; and

c. Your share at the time of planting.

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

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

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

b. Coverage level 2 will apply if you have not elected a coverage level.

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

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the oat policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches when the oats are planted except that, in counties with an April 15 cancellation date, insurance on fall-planted oats attaches April 16 following planting if there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which oats are normally harvested:

(a) Alaska.....September 25;

(b) All other states.....October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the oats on any unit are damaged and you decide not to further care for or harvest any part of them;

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

(c) You want to harvest the oats for silage or hay (after such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes); or

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

Insured acreage may not be put to another use until we have appraised the oats and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

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

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

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

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

(b) Harvest of the unit; or

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

b. You must obtain written consent from us before you destroy any of the oats which are not to be harvested.

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

9. Claim for indemnity.

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

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

(2) Harvest of the unit; or

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

b. We will not pay any indemnity unless you:

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

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

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

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

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

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

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature oat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(2) Mature oat production which, due to insurable causes, has a test weight of less than 27 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, contains less than 80 percent sound oats or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured oats by the price per bushel of U.S. No. 2 oats; and

(b) Multiplying the result by the number of bushels of such oats.

The applicable price for No. 2 oats will be the local market price on the earlier of the day the loss is adjusted or the day the insured oats are sold.

(3) Any harvested production from other volunteer plants growing in the oats will be counted as oats on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

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

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of oats becomes general in the county;

(b) Harvested; or

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

(6) The amount of production of any unharvested oats may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the oats are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request To Exclude Hail And Fire."

(8) The commingled production of units will be allocated to such units in proportion to our

liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1, and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

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

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

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

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all oats produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for:

(1) The previous crop year in counties having an April 15 cancellation date;

(2) The year prior to the previous crop year in counties having any other cancellation date.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the previous 10-year average.

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

(1) If deducted from an indemnity will be the date you sign the claims; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; New Mexico except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia and all counties east thereof.	Sept. 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties.	Oct. 31.
All other California Counties, Taos County, New Mexico; all other Virginia counties and all other states.	Apr. 15.

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by June 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of oat crop insurance:

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

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

c. "Crop year" means the period within which the oats are normally grown and will be designated by the calendar year in which the oats are normally harvested.

d. "Harvest" of oats on the unit means combining, threshing, or cutting for hay or silage.

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

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

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of oats in the county on the date of planting for the crop year:

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

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the oats on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on May 3, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15480 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 429

[Docket No. 0017A]

Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the cancellation and termination dates and filing dates in certain counties; and (4) adding a definition of "Loss ratio." The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 28, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither and Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must, by contract, be on file by June 30, 1985, good cause is shown for making this rule effective in less than 30 days.

On Friday, March 29, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 12565, revising and reissuing the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1986 and succeeding crop year. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of a few minor changes in language and format, the proposed rule is hereby adopted as final.

The principal changes in the rye policy are:

1. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

2. Section 5.—Remove the provisions for the transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. Section 9.d.—Change the method for computing indemnities when acres are underreported. The production from all acres will be applied against the

reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

4. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

5. Section 15.e.—Change cancellation and termination dates for Nebraska and South Dakota from September 15 to September 30. These dates more closely relate to harvest in these areas.

6. Section 16.—Change the filing date for contract changes from May 31 to June 30 preceding the cancellation date to coincide with the extension of cancellation dates.

7. Section 17.g.—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

List of Subjects in 7 CFR Part 429

Crop Insurance, Rye.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1986 and succeeding crop years, to read as follows:

PART 429—RYE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 429.1 Availability of rye crop insurance.

Insurance shall be offered under the provisions of this subpart on rye in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

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

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

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

§ 429.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 429.4 Creditors.

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

§ 429.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the rye insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 429.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the rye crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 429.7 The application and policy.

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

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

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a rye contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop

years. The provisions of the Rye Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Rye—Crop Insurance Policy

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

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

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

Terms and Conditions

1. Causes of loss.

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

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

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

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

(2) The failure to follow recognized good rye farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be rye planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

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

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

d. We do not insure any acreage:

(1) If rye was seeded with vetch or flax or other small grains;

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

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

(4) Which is destroyed, it is practical to replant to rye, and such acreage is not replanted;

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

(6) Of volunteer rye;

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

(8) Planted with another crop.

e. If insurance is provided for an irrigated practice:

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

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

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

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

b. The practice; and

c. Your share at the time of planting.

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

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

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

b. Coverage level 2 will apply if you have not elected a coverage level.

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

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the rye policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

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

a. Total destruction of the rye;

b. Combining, threshing, harvesting for silage or hay, or removal from the field;

c. Final adjustment of a loss; or

d. October 31 of the calendar year in which rye is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

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

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

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

Insured acreage may not be put to another use until we have appraised the rye and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

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

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

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

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

(b) Harvest of the unit; or

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

b. You must obtain written consent from us before you destroy any of the rye which is not to be harvested.

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

9. Claim for indemnity.

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

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

(2) Harvest of the unit; or

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

b. We will not pay any indemnity unless you:

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

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

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

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

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

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

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature rye production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 16.0 percent; or

(2) Mature rye production which, due to insurable causes, has a test weight of less than 52 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act: contains more than 7 percent damaged kernels; more than 25 percent thin rye; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured rye by the price per bushel of U.S. No. 2 rye; and

(b) Multiplying the result by the number of bushels of insured rye.

The applicable price for No. 2 rye will be the local market price on the earlier of the day the loss is adjusted or the day the insured rye is sold.

(3) Any harvested production from other crops growing in the rye will be counted as rye on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good rye farming practices;

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

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of rye becomes general in the county;

(b) Harvested; or

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

(6) The amount of production of any unharvested rye may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the rye is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

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

f. You must not abandon any acreage to us.

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

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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

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

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

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

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all rye produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions

beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the previous 10-year average.

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

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

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
Minnesota and North Dakota	Sept. 15
All other states	Sept. 30

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

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by June 30 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of rye crop insurance:

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

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

c. "Crop year" means the period within which the rye is normally grown and is designated by the calendar year in which the rye is normally harvested.

d. "Harvest" of rye on the unit means combining, threshing, or cutting for hay or silage.

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

f. "Insured" means the person who submittted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

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

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

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

k. "Unit" means all insurable acreage of rye in the county on the date of planting for the crop year:

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

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

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

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on May 3, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15481 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 441

[Docket No. 2131S; Amdt. No. 1]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final the amendment to the Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1985 and succeeding crop years, which changed the end of the insurance period from October 31 to individual end-of-insurance-period dates by variety and county. The amendment was implemented by the Federal Crop Insurance Corporation (FCIC) to provide the proper dates for the end of insurance period in order to maintain the actuarial integrity of the grape crop insurance program. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 27, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 14, 1984, FCIC published an interim rule in the **Federal Register** at 49 FR 44985, amending the Table Grape Crop Insurance Regulations to change the dates for the end of insurance period in order to maintain the actuarial integrity of the grape crop insurance program. After the first year of crop insurance experience on table grapes, it became evident that using October 31 as the end of insurance period was not appropriate for the different varieties of table grapes currently insured. Normal harvesting for such table grape varieties ranges from July 15 to October 31. Under the October 31 date the insured could delay harvest for an extended period of time substantially increasing FCIC's exposure to loss.

The Federal Crop Insurance Corporation is charged by the Federal Crop Insurance Act, as amended, to maintain an actuarially sound program of crop insurance protection. To permit the insured to delay harvest is counter to that mandate.

Public comment on this rule was solicited for 60 days after the publication of this rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule as published is hereby adopted as final.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grapes.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adopts the interim rule for Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1985 and succeeding crop years, as published at 49 FR 44985, as final.

The authority citation for 7 CFR Part 441 continues to read:

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

Done in Washington D.C., on March 11, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15483 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the listing of institutions that have been determined to be American institutions of research recognized by the Attorney General. These institutions are eligible to confer constructive residence for naturalization purposes for their overseas employees.

This rule deletes the specific department of zoology from its parent institution, Michigan State University. It will allow employees of any department of Michigan State University, who are conducting scientific research abroad on behalf of the institution, to be eligible for constructive residence.

EFFECTIVE DATE: June 27, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Section 316(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1427(b) allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted towards the residence requirements for naturalization. 8 CFR 316a.2 lists American institutions of research that have been recognized by the Attorney General to qualify for the constructive resident benefit. Absences abroad in the employment of these institutions will be counted as constructive residence in establishing the residence requirements for naturalization, provided all conditions of 8 U.S.C. 1427(b), which lists the requirements for naturalization, are satisfied.

Michigan State University is already listed as an institution of research; however, the benefit of the regulation is only limited to those employees of the Zoology Department. Deleting the Zoology Department from the listing will enable those alien employees and alien spouses of United States citizen employees of *any* department of Michigan State University to be deemed eligible for the benefits of section 316(b) and 319(b), if regularly stationed abroad in the conduct of research for such department.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely amends an existing listing. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have significant economic impact on a substantial number of small entities. This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section (1)(a) of E.O. 12291.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization.

Immigration and Nationality Act, Residence.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority for 8 CFR Part 316a continues to read as follows:

Authority: Secs. 103 and 316 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1427).

§ 3165a.2 [Amended]

In § 316a.2, American institutions of research, the listing of organizations is amended by deleting "Michigan State University (Department of Zoology), Lansing, Michigan" and adding in alphabetical sequence "Michigan State University, Lansing, Michigan".

Dated: June 18, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-15378 Filed 6-26-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

Natural Gas; Incremental Pricing Regulations; Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds precribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION: Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of July 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to July 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

(Calendar year 1984)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA Section 102 Threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Section 109 Threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
130% of No. 2 Fuel Oil in New York City Threshold	7.730	7.570	7.570	6.550	6.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290

(Calendar year 1985)

	Jan.	Feb.	Mar.	Apr.	May	June	July
Incremental Pricing Threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421
NGPA Section 102 Threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022
NGPA Section 109 Threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400

[FR Doc. 85-15445 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-006]

Wyoming 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 BB of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing benchmarks and granting final approval to the Wyoming 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 Wyoming plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over private sector maritime employment, private sector hazardous waste disposal facilities designated as "Superfund sites" and activities on the Warren Air Force Base. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: June 27, 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 Parts 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 §§ 1902.3 and 1902.4 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 review 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 additional requirement for final 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 Wyoming Plan and its Compliance Staffing Benchmarks

Wyoming Plan

On January 30, 1973, Wyoming 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 February 23, 1973, a notice was published in the **Federal Register** (38 FR 5018) 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. These comments involved concerns regarding the effectiveness of the State's enforcement program. No other written comments were received and no requests for an informal hearing were made. 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 May 3, 1974, the Assistant Secretary published a notice granting initial approval of the Wyoming plan as a developmental plan under section 18(b) of theAct (39 FR 15394). The plan covers all safety and health issues in the State except safety and health in private sector maritime employment, at superfund sites and on the Warren Air Force Base. The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Wyoming Occupational Health and Safety Commission, which is headed by a Chairman, is designated by the Governor to administer the plan throughout the State. The day-to-day administration of the plan is directed by the Wyoming Health and Safety Department which is headed by an Administrator appointed by the Commission. The plan provides for the adoption by Wyoming of standards which are generally identical to Federal occupational safety and health standards including emergency temporary standards. In addition, Wyoming has promulgated under its plan independent State regulations for oil and gas well drilling, servicing, and special servicing. 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 all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; employee discrimination protection; variances; safeguards to protect trade secrets; and employer and employee right to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by an independent hearing officer of the Wyoming Occupational Health and Safety Review Commission. Decisions of the Review Commission may be appealed to the State District Court.

The notice of initial approval noted a few distinctions between the Federal and Wyoming programs. Wyoming's nondiscrimination procedures differ from the Federal in that a case does not go into Court unless it is on an appeal from an administrative decision following a contested case hearing. Unlike OSHA's six month time period for issuance of notices of violation,

Wyoming's notices of violation may not be issued after the expiration of ninety [90] days following the occurrence of any alleged violation. The State's emergency temporary standards are in effect for a period of one hundred twenty (120) days compared to the Federal 6 month period.

The Assistant Secretary's initial approval of Wyoming's 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 BB; 39 FR 15394 (May 3, 1974)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and submitted for OSHA approval during the period ending May 3, 1977. These "developmental steps" included adoption of Federal standards as State occupational safety and health standards, legislative amendments to the Administrative Procedures Act and the Fair Employment Practice Act, program regulations, completion of a compliance manual, merit staffing system, and the development of a management information system. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, legislative amendments, merit staffing system, management information system, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA and 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 Wyoming subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.344).

The Wyoming plan was approved with language in its Occupational Health and Safety Act which could be interpreted to require criminal prosecution for the assessment and collection of all penalties. (OSHA's penalties are civil and assessed through an administrative process.) The State, however, considered its penalties to be civil and operated as such through a State administrative review board. In July, 1978, the State Attorney General rendered an opinion that all penalties under the State Act were criminal. An effort to revise the enabling legislation failed in the Wyoming General Assembly. As a result of Wyoming's failure to revise its law to change the method for collection of penalties from criminal to civil, OSHA notified the State that it was being given the opportunity to show cause why a proceeding should not be initiated for withdrawal of approval of the plan. Before this proceeding was begun, the U.S. District Court for the District of Wyoming enjoined OSHA from proceeding further with plan withdrawal action. Before the Federal Court adjudicated the case, the Wyoming General Assembly passed amendments to the Wyoming Occupational Health and Safety Act to replace the criminal penalties with appropriate civil penalties (Enrolled Act No. 13, Senate, 1980). The amendments were reviewed and approved by OSHA on December 11, 1980 (45 FR 83484).

Although Wyoming had not sought previously to enter into an operational status agreement, in 1981 OSHA determined that such agreements should be concluded with all qualified States. Thus, a **Federal Register** notice was published on October 10, 1982 (47 FR 25323), announcing that an operational status agreement had been signed on December 10, 1981 for Wyoming. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement with regard to Federal occupational safety and health standards in the issues covered by the Wyoming plan.

On December 30, 1980, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Wyoming had satisfactorily completed all developmental steps (45 FR 85739). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Wyoming plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail 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.

Wyoming Benchmarks

In 1978, the Assistant Secretary was directed 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, to calculate for each State plan State the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Wyoming to allocate 5 safety compliance officers and 10 industrial hygienists to conduct inspections under the plan.

In September 1984 the Wyoming State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Wyoming. Pursuant to an initiative begun in August 1983 by the State plan designees as group with OSHA and in accord with the formulas and general principles established by that group for individual State revision of the benchmarks, Wyoming reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of a revised compliance staffing benchmarks of 6 safety and 2 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 and the resultant eligibility of the Wyoming State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2491). 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 Wyoming 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

Wyoming 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 Wyoming plan (section "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** notice also contained notice of the Occupational Safety and Health Administration's proposal to approved revised compliance staffing benchmarks for Wyoming. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Wyoming was included in the notice. In addition OSHA submitted, as a part of the record (Docket No. T–006), Wyoming's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in the notice. 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 VIII Office in Denver, Colorado, and the office of the Wyoming Administrator in Cheyenne. Summaries of the January 16 proposal, with an invitation for public comments were published in Wyoming on February 18, 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 Wyoming 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. Sixteen comments were received in response to these notices. Three comments were received from organized labor, eleven from private employers, and two from local government officials. 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 Wyoming plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Wyoming.

In response to the January 16 **Federal Register** notice, OSHA received comments from Rehabilitation Enterprises of North Eastern Wyoming, Larry W. Samson, President (Ex. 4–2); Holly Sugar Corporation, Walter S. Ambiel, Factory Manager (Ex. 4–3); Campbell County Concrete, Inc., Bruce P. Morrison, Vice President (Ex. 4–4); Westates Construction Company, Ronald L. Callantine, Safety Director (Ex. 4–5); Town of Douglas, Wyoming, Bobbe Titus, Administrative Assistant (Ex. 4–6); Sweetwater County School District No. One, Elwin F. McGrew, Administrative Assistant for Physical Plant (Ex. 4–7); Ark Industries and Rehabilitation Center, Theodore S. Serdiuk, Production Coordinator (Ex. 4–8); Halliburton Services, J. A. Schell, District Manager (Ex. 4–9); WR Metals Industries, Inc., Richard A. Daniele, Vice President (Ex. 4–10); True Drilling Company, David L. True, Managing Partner (Ex. 4–11); Lawrence-Allison and Associates West, Inc., John D. Cornelison, Safety, Security and Environmental Director (Ex. 4–12); Updike Brothers, Inc., Ralph Updike, Vice President (Ex. 4–13); American Federation of Labor Congress of Industrial Organizations AFL–CIO, Margaret Seminario, Associate Director (Ex. 4–14); United Steelworkers of America, Mary Win O'Brien, Assistant General Counsel (Ex. 4–15); Magic City Enterprises, John W. Firestone, Executive Director (Ex. 4–16). Wyoming Occupational Health and Safety Administrator, Donald Owsley, responded to the public comments (Ex. 4–17).

Eleven employers expressed their support for approval on the grounds that, among other things, the State is very responsive to both employers and employees, that all inspections are conducted in a professional manner by well qualified personnel, that the Wyoming compliance staff is comprised of highly intelligent professionals with long years of practical application and working experience, and that the training and technical assistance provided is excellent. Several commented specifically on inspections that had occurred in their facilities. The Sweetwater County School District and the Town of Douglas, Wyoming expressed support of Wyoming's effort in providing technical assistance and consultation. The comments show that both the field supervisors and consultants have been very helpful in assisting local government jurisdictions in identifying problem areas and developing corrective solutions. (Exs. 4–2, 4–3, 4–4, 4–5, 4–6, 4–7, 4–8, 4–9, 4–10, 4–11, 4–12, 4–13, and 4–16).

The United Steelworkers of America, commented extensively on the benchmark revision process in general but did not direct any specific comments to the Wyoming revision.

The AFL–CIO indicated opposition to approval of the proposed revised benchmarks for Wyoming and therefore opposed the granting of final 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 Wyoming 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. Wyoming State designee, Donald Owsley, responded to the concerns

expressed by the AFL–CIO on both the benchmarks and State-specific issues.

Comments by the AFL–CIO and the Steelworkers addressing the proposed revised benchmarks for the most part reflected the commenters concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmarks formula as applied in Wyoming should have assumed a need for routine, general-schedule inspections at all covered workplaces; whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Wyoming's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the **Federal Register** notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Wyoming and other States involved in the 1984 revision process employs the best information and techniques currently available, properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall* and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985, **Federal Register** notice on Kentucky (50 FR 24884).

The comments filed by the AFL–CIO also addressed several specific issues relating to calculation of the benchmarks for Wyoming. The union objected to the fact that there were no workplaces with ten or fewer employees in high hazard industries added into the State general schedule inspection universe for health. In reaching this determination the State analyzed data from its monthly Compliance Activity logs for a period of five years. The resulting statistics showed that in small establishments fewer than the average number of violations per inspection were found. Based upon this calculation (indentical in methodology to calculations made for high-hazard non-manufacturing which resulted in addition to the health inspection universe of eleven industry groups) the State reasonably determined that the comparatively lower likelihood of identifying and correcting violations in this size group did not justify inclusion in the universe for general schedule health inspections. In addition, Wyoming pointed out in its response to the AFL–CIO's comments that since the average establishment in Wyoming has only 12 employees, many relatively small establishments are included in the initial universe.

The AFL–CIO objected to the exclusion from the State's general schedule safety inspection universe of several non-manufacturing industry groups for which higher than average injury rates have been reported. The State has in fact added into its initial safety universe 118 non-manufacturing establishments with greater than ten employees in industries whose lost workday case injury rate is higher than the State average, but their inclusion is based upon a comprehensive review of Wyoming inspection history. The included industries were identified as having either a historically high accident or injury experience or a violation per inspection rate higher than the State average. The industries identified in the union comments did not share this history of violations or enforcement-preventable accidents largely because of the special nature of the businesses in question. Among the industries the AFL–CIO suggest for inclusion are transportation and trucking which the State points out in its response are largely regulated by the Department of Transportation, not OSHA; personnel supply services whose workers would be covered under the business to which they are supplied; and, superfund sites all of which the State does not cover under the plan.

The union also suggests hospitals as appropriate for inclusion in the State's private sector general schedule health universe. The State's survey of enforcement experience did not identify hospitals as a non-manufacturing industry with a historically high violation experience. However, as Wyoming asserts in its response, the majority of hospitals in Wyoming are public sector facilities subject to inspection as part of the public sector program, which is covered by a separate factor in the benchmarks formula. Moreover, the State must respond to complaints and accidents in all hospitals, public or private.

The State has projected, in accordance with its past enforcement experience, that 5% of its health inspection resources will be required for the public sector program. Another significant portion of its health resources will be devoted to construction and other mobile industries which is appropriate in view of the prevalence of such industry in Wyoming's industrial mix. The AFL–CIO expresses the view that because these levels are based on actual enforcement history, they do not make provision for coverage of hazards which have "not been adequately covered by inspections in the past." No data is offered to support this suggestion of inadequate enforcement, and OSHA's findings concerning the effectiveness of State plan enforcement, set forth elsewhere in this notice, offer no basis for such an assumption and indeed show that the State's inspections effectively identify and require the correction of workplace hazards.

The AFL–CIO comments object to the exclusion from general schedule inspections of establishments which participate in Wyoming's comprehensive safety and health consultation program known as EVTAP (Employer's Voluntary Technical Assistance Program). Such establishments have qualified for an exemption from routine inspections by participating in a comprehensive on-site safety and health visit performed by the Technical Assistance Division (non-benchmark personnel). The correction of all hazards identified during the visit is required and the participating establishments remain subject to State enforcement in response to accidents and complaints. Exclusion of the ten establishments who have participated in such a program from Wyoming's benchmark calculations is justified.

The union also objects to what is viewed as a "permanent" exemption under the EVETAP program, but in fact such exemption lasts only one year. The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection that as some establishments leave the EVETAP

program others will likely seek to be qualified under the program. The exclusion of ten sites from the routine inspection universe reflects the State's best estimate of likely employer response to the program in the future.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Wyoming and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. However, 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. Such direct numerical comparison of staffing levels is no more valid than was the direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting, devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Wyoming.

For these reasons, and in light of other comments by groups and individuals directly affected by and knowledgable about safety and health enforcement needs in Wyoming, OSHA believes application of the current benchmark formula for Wyoming has resulted in staffing levels which result in fully effective enforcement in the State of Wyoming.

Findings and Conclusions

Wyoming Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Wyoming, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Wyoming. 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 6 safety and 2 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Wyoming 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 Wyoming 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 Wyoming 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 Wyoming 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 plan 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, Wyoming has generally adopted in a timely manner standards which are identical to Federal standards. During the evaluation period, the State adopted all four applicable permanent Federal standards within the six months' time frame for response to Federal actions. Wyoming adopted the new Federal Hazard Communication Standard in August 1984 as an interim standard pending legislative consideration of a different State standard. In addition Wyoming repromulgated it Access to Employee Medical and Exposure Records Standard in November 1984 to incorporate OSHA comments and recommendations regarding its earlier adopted access standard. Wyoming is current in its response to Federal standards. Any prior delays were minimal and have had no adverse impact in maintaining Wyoming's performance at a level at least as effective as the Federal program. In addition, Wyoming has adopted State standards for conditions, not covered by Federal standards, such as oil and gas well drilling, servicing, and special servicing.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. As already noted, Wyoming adopts

standards identical to Federal standards. Wyoming likewise adopts standards interpretations, which are identical to the Federal interpretations. 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 Wyoming.

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 Wyoming 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 Wyoming 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, Wyoming granted one permanent variance during the 18(e) evaluation period. The action on this request was in accordance with the State's procedures and the granted variance provided protection equivalent to that provided under the standard.

Accordingly, OSHA finds that the Wyoming 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 enforcment including compulsory process (29 CFR 1902.4(c)(2)).

The Wyoming law (Wyoming Statutes 27–11–101 to 27–11–114) 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" shows 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, Wyoming follows a complaint response policy similar to the Federal. Data contained in the 18(e) Evaluation Report indicates that 60.3% of the safety complaints and 71.4% of the health complaints resulted in inspections.

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 91.0% of State programmed safety and 61.5% of programmed health (general schedule) inspections during October 1982 through March 1984 were conducted in high-hazard industries. The percentage of programmed safety inspections is below the comparable Federal level during the evaluation period due only to economic conditions. Wyoming's high-hazard industries of oil and gas well drilling, extraction, and servicing; manufacturing; and construction have collectively experienced a 34% to 54% reduction in employment. Programmed health inspections are low because there was a State-wide 16% decline in employment in the State's chemical and allied products industry. (Evaluation Report, p. 9.)

The AFL–CIO (Ex. 4–14) commented that Wyoming conducts fewer scheduled health inspections in high-hazard industries than the Federal average and exempts employers from these inspections under certain conditions. Wyoming in its response (Ex. 4–17) indicated that inspections are made in those high-hazard industries that exist in the State. Wyoming is not a highly industrialized State, and it does not have many of the high-hazard industries present which are available to Federal OSHA for inspection; for example, foundries, cotton mills, steel mills, etc. The State also explained that Wyoming's exemption program does remove certain employers from programmed health inspections. However, this is done only after a comprehensive health and safety visit is conducted and all hazards corrected.

(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 and previous reports show employee representatives accompanied inspectors or employees were interviewed on 100% of initial inspections, 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, Wyoming requires that a poster, which was previously approved by OSHA (41 FR 30329), 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 104 inspections. 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 Wyoming law and regulations provide for discrimination protection

which is at least as effective as the Federal. The State investigated six discrimination complaints during the evaluation period. The investigations were complete, thorough, and handled in a satisfactory manner. Federal evaluation of the cases indicates that the State action was satisfactory (Evaluation Report, p. 20).

(d) *Restraint of Imminent Dangers; 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 no imminent danger situations identified during the evaluation period. No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets during the reporting period.

(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 27–11–65 of the Wyoming Occupational Health and Safety Act authorizes the Administrator or his representative to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. In addition, section 27–11–108(a) authorizes the Administrator to petition the District Court for an order to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The Wyoming law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are generally 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 procedures. The 18(e) Evaulation Report shows that Wyoming received 9 denials of entry and warrants were obtained for all 9 cases. The State's use of its procedures was found to be proper. (Evaluation Report, p. 13). There were six instances of advance notice. No problem with its use was indicated during the evaluation period (Evaluation Report, p. 14).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees 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 Wyoming 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(b)(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 (19 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 (2.4). Additionally, data showed State percentages of not-in-compliance programmed inspections for safety (89.4%) was comparable to Federal OSHA; however health (81.7%) far exceeded Federal OSHA. Neither the data nor any comments suggest that the State has any problem in adequately documenting inspections to support citations. Wyoming's lapse time from inspection to issuance of citation was timely and averaged 5.6 days for safety and 3.1 days for health (Appendix A to Evaluation Report, p. 35).

During the 18(e) evaluation period penalty levels for serious violations were $208 for safety and $229 for health. Wyoming conducts a higher proportion of follow-up inspections than does Federal OSHA (5.8% of not-in-compliance inspections). Abatement periods are generally shorter than Federal (3.4 days for safety, 3.6 days for health.) Wyoming attempts to document abatement within 30 days for all serious, willful and repeat violations. The 18(e) Evaluation Report indicates acceptable performance (pp. 16–18).

(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 rquirements 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)). Wyoming's procedures for employer 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. Appeals of citations, penalties and abatement periods are heard by an independent hearing officer of the Occupational Health and Safety Review Commission. Decisions of the Commission may be further appealed to the State District Court. Nineteen inspections during October 12, 1982 through March 31, 1984 resulted in contests. OSHA's evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported (Evaluation Report, p. 19).

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)). As discussed in the History of the Wyoming plan above, in 1980 Wyoming obtained legislative correction of a deficiency identified in its system for assessing and collecting penalties. Accordingly, OSHA finds that the Wyoming plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Wyoming 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.

Wyoming's plan provides a program in the public sector which is identical to that in the private sector, except that public sector employers are not assessed monetary penalties, but are required to abate cited violations. The State conducted 44 inspections in the public sector and cited 141 violations. The proportion of inspections dedicated to the public sector (.7% of total inspections in the evaluation period) was considered sufficient to the needs of public employees. Injury and illness rates in the public sector are significantly lower than those in the private sector (4.3 combined State and local government all case rate and 1.8 combined State and local government lost workday case rate in 1982).

Because the State treats the public sector in nearly the same manner as the private sector, as evidenced 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 Wyoming 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.

Wyoming has committed itself to funding the State share of salaries for 6 safety inspectors and 2 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequently FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Wyoming.

As noted in the **Federal Register** notice announcing certification of the completion of development steps for Wyoming (45 FR 85739), 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. Civil Service Commission

The State provides continuing training for its staff. The Evaluation Report noted that the State provided formal training for all professional employees (Evaluation Report, p. 7).

Because Wyoming 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 Wyoming plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Wyoming plan was funded at $371,534 in FY 1934. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Wyoming's funding appears sufficient in absolute terms, moreover, the State's expenditures per covered employees are comparable to Federal OSHA. (Evaluation Report, p. 22). On this basis, OSHA finds that Wyoming has provided sufficient funding for the various activities carried out the 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 assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the act and 29 CFR 1902.3(1)).

Wyoming's employer recordkeeping requirements are substantially identical to those of Federal OSHA, except that Wyoming has elected not to adopt the Federal recordkeeping exemption and requires all employers to maintain records; 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 is 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 Wyoming 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, Wyoming provided training to 742 employers and supervisors and 421 employees. Of the employees trained, 20% were in high hazard industries (Evaluation Report, p. 6).

Wyoming provides public sector on-site consultative services to employers under its approved State plan. (The State's on-site consultation program for the private sector is conducted apart from the State plan under an agreement with OSHA under section 7(c)(1) of the OSHA Act.)

Accordingly, OSHA finds that Wyoming 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, Wyoming's reportable injury and illness rates in absolute terms are slightly higher than Federal averages.

Both the BLS all case rate for Wyoming (7.6) and lost workday case rate (3.6) were slightly higher than rates in States where Federal OSHA provided enforcement coverage in 1982. However, the overall trend in worker safety and health injury and illness rates since 1973 compares favorably to that under the Federal program (Evaluation Report, p. 23).

The AFL–CIO commented (4–14) that in Wyoming all categories except one exceeded the Federal averages for injury and illness and lost workday case rates. The lost workday case rate in manufacturing was particularly high. Wyoming explained in its response that because of its specific industry mix and size of establishments, Wyoming believes that the State cannot be effectively compared to the Federal average. Furthermore, the manufacturing lost workday case rates show a steady decline for 1979, 6.9; 1980, 6.6; 1981, 6.0; 1982, 5.9 (Ex. 4–17).

Considering the State's overall decline in injury and illness rates, OSHA finds a favorable comparison between Wyoming'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** documents 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 Wyoming 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) the Wyoming State plan for occupational health and safety 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 Part 1902. Therefore, the revised compliance staffing benchmarks of 6 safety and 2 health are approved and the Wyoming State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective June 27, 1985.

Under this 18(e) determination, Wyoming 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, Wyoming 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 Wyoming plan terminates OSHA authority for Federal enforcement of its standards in Wyoming, 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 Wyoming 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 1981.)

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 Wyoming 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, since the issues of maritime safety and health are excluded from coverage under the Wyoming plan, as well as to activities at the Warren Air Force Base and private sector hazardous waste disposal facilities designated as Superfund sites. 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 BB of Part 1952 to reflect the final approval of the Wyoming plan.

A new § 1952.343, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Wyoming.

A new § 1952.344, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

A newly redesignated § 1952.345, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.342, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on December 10, 1981. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Wyoming, and the Operational Status Agreement is no longer in effect. § 1952.345 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 BB 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 § 1952.340, to clearly identify the 1974 initial plan approval decision to which it relates, and deletion of former § 1952.345, which pertained to approval of miscellaneous, unrelated plan changes. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.346.

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 Wyoming 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 certification to this effect was forwarded previously 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 27th day of June 1985.

Robert A. Rowland,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart BB 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).

§ 1952.345 [Removed]

2. Section 1952.345, Changes to approved plans, is removed.

§ 1952.340 [Amended]

3. Section 1952.340 is amended by revising the heading to read: § 1952.340 Description of the plan as initially approved.

§§ 1952.341, 1952.342, 1952.343, and 1952.344 [Redesignated as 1952.346, 1952.345, 1952.341, and 1952.342, respectively]

§ 1952.341 [Redesignated as § 1952.346]

4. Section 1952.341 Redesignated as § 1952.346

§ 1952.342 [Redesignated as § 1952.345]

5. Section 1952.342 Redesignated as § 1952.345

§ 1952.343 [Redesignated as § 1952.341]

6. Section 1952.343 Redesignated as § 1952.341

§ 1952.344 [Redesignated as § 1952.342]

7. Section 1952.344 Redesignated as § 1952.342

8. The Table of contents for Part 1952, Subpart BB, is revised to read as follows:

Subpart BB—Wyoming

9. New §§ 1952.343 and 1952.344 are added to read as follows:

§ 1952.343 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 Wyoming, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 6 safety and 2 health compliance officers. After opportunity for pulbic comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 27, 1985.

§ 1952.344 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after a 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 participtipn in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Wyoming State plan for a period of at least one year following certification of completion of developmental steps (45 FR 85739). Based on the 18(e) Evaluation 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 Wyoming'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 Wyoming plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 27, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Wyoming except for private sector maritime, employment on the Warren Air Force Base and at private sector hazardous waste disposal facilities designated as Superfund sites.

(c) Wyoming 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.

10. Newly designated §§ 1952.345 and 1952.346 are revised to read as follows:

§ 1952.345 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval of the Wyoming plan under section 18(e) of the Act, effective June 27, 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 Wyoming 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(f) 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 Wyoming 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. Federal jurisdiction is also retained for employment at Warren Air Force Base, at private sector hazardous waste disposal facilities designated as Superfund sites and with respect to Federal Government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction 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 section 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 Wyoming 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.

§ 1952.346 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, 1961 Stout Steet, Room 1554, Denver, Colorado 80294; and Office of the Wyoming Department of Occupational Health and Safety, 604 East 25th Street, Cheyenne, Wyoming 82002.

[FR Doc. 85-15391 Filed 6-26-85; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12-85-01]

Drawbridge Operation Regulations; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on drawbridge requirements that appeared at page 17450 in the **Federal Register** of Tuesday, April 24, 1984 (49 FR 17450). The action is necessary to correct omission of a previously published regulation.

FOR FURTHER INFORMATION CONTACT: R. E. Guerra, (415) 437-3514.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Accordingly, the Coast Guard is correcting FR Doc. 84-10537 appearing on page 17450 in the **Federal Register** issue of April 24, 1984, to read as follows:

On page 17459 § 117.171 is corrected by adding paragraph (c) to read as follows:

§ 117.171 Middle River.

* * * * *

(c) The California Route 4 Bridge, mile 15.1, between Victoria Island and Drexler Tract need not open for the passage of vessels.

Dated: April 17, 1985.

J.D. Costello,

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

[FR Doc. 85-15415 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 85-21]

Temporary Drawbridge Operations Regulations; Cold Spring Brook, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulations.

SUMMARY: The Coast Guard is issuing temporary regulations for the footbrigde over Cold Spring Brook, at mile 0.1, adjacent to the Summerwood Codominiums at Old Saybrook, CT. The temporary regulations allow the draw to remain in the closed position except that openings will be provided within 15 minutes of a mariner's request via telephone established at the bridge by owner. This is being done to evaluate the temporary regulations designed to allow safe pedestrian access to a private beach facility across Cold Spring Brook while still providing for the reasonable needs of navigation.

DATES: These temporary regulations become effective on July 2, 1985 and terminate on August 30, 1985. Comments must be received on or before September 15, 1985.

ADDRESS: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135–A, Governors Island, NY 10004.] Comments may also be hand-delivered to this address. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m. Monday through Friday, except for federal holidays.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for these regulations and it is being made effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures would be impracticable. Implementation of these temporary regulations is necessary to evaluate their effect during the summer months when both recreational boating traffic and pedestrian traffic to the beach are at their peak.

Persons affected by or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and pedestrian traffic, including observed effects (beneficial and deterimental), and any suggestions for changes. Persons submitting comments should include their name and address, identify the bridge and give reasons for support of or opposition to these temporary regulations. If a determination is made to permanently change the regulations, a Notice of Proposed Rulemaking will be published to afford the public further opportunity to comment at that time.

Drafting Information

The drafters of these regulations are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. A new § 117.202 is added to read as follows for the period July 2 through August 30, 1985. Because this is a temporary rule, this revisions will not appear in the Code of Federal Regulations.

§ 117.202 Cold Spring Brook.

The draw of the footbridge, mile 0.1 at Old Saybrook, shall open within 15 minutes of a mariner's request. To enable mariners to request bridge openings, the owner of this bridge shall maintain and monitor a telephone at the bridge and provide a means for mariners to secure their boats upstream and downstream of the bridge in order to use this telephone.

Dated: June 7, 1985.

P.A. Yost,

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

[FR Doc. 85-15414 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CCGD1-85-4R]

Safety Zone; Chelsea River, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a safety zone on the waters of the Chelsea River, Boston Inner Harbor, one hundred yards above and below the Chelsea Street Drawbridge located at Latitude 42–23–10 North, Longitude 71–01–23 West. The zone is needed to protect vessels and the bridge structure from damage associated with reduced vertical clearance under the span and a damaged vessel fendering system around the foundation of the bridge. Navigation through this zone is prohibited unless the conditions noted below are met, or passage deviating from those conditions is specifically authorized by the Captain of the Port.

DATES: This regulation is effective immediately. It will be terminated when the repairs to the structure of the bridge span and fendering system are complete.

Comments: Comments on this regulation must be received on or before 12 July 1985. Comments should be mailed to: Commanding Officer U.S. Coast Guard Marine Safety Office, 447 Commercial Street, Boston, Massachusetts 02109–1096. The comments will be available for inspection and copying at the above address. Normal office hours are between 7:30 AM and 4:00 PM, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Paul Von Protz, (617) 223–1470.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rule making procedures by publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is needed to minimize the opportunities for damage to vessels passing through the bridge opening with the resulting potential for environmental damage.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is desired to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office address listed under "Comments" in this preamble. Commenters should include their names and addresses, identify the docket number (CCGD1–85–4R) and give reasons for their comments. Based upon the comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Captain Stephen J. Masse, Captain of the Port, and Lieutenant Commander Robert F. Duncan, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation have occurred on several occasions in the past. The most recent was damage to the wooden fendering system for the abutments on the Chelsea side. A fendering system is designed to protect a bridge from passing vessels and vessels from the obstruction of the bridge. Several times in the past four years the bridge draw span has been hit by passing vessels. A survey of the bridge showed that the vertical clearance of the opening, noted on the charts provided for navigation and specified in the bridge's permit to operate, could not be achieved. The roadway across the bridge is important for commuters and other travelers linking the towns of Chelsea, Everett, and Revere directly with East Boston, and Logan International Airport. Opening the span until repairs were completed was considered but not adopted because the impact on the highway users would be great and would not enhance the primary goal of allowing safe vessel transit through the obstruction. The reduced vertical clearance and lack of a fendering system would remain. As such, the option of controlling vessels passing through the bridge opening is considered the only viable option for enhancing safety.

List of Subjects in 33 CFR Part 165

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

Final Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.120 to read 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; 46 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. In Part 165, adding a new § 165.120 to read as follows:

§ 165.120 Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The waters of the Chelsea River, Boston Inner Harbor, for 100 yards upstream and downstream of the center of the Chelsea Street Draw span (Latitude 42–23–10 North, Longitude 71–01–23 West).

(b) *Regulation.* The following standards are the minimum requirements for transit of the Safety Zone. Additional precautions may be taken by the pilot and/or person in charge (Master or Operator).

(1) All tankships greater than 1,000 Gross Tons shall be under the direction and control of a Licensed Federal Pilot, this does not relieve the person in charge (Master or Operator) from his ultimate responsibility for safe navigation of the vessel.

(2) All vessel(s) speed shall be kept to a minimum considering all factors and the need for optimum vessel control.

(3) Restrictions on size and draft of vessels:

(i) No vessel greater than 660 feet in length (overall) and/or greater than 90 feet in beam (extreme breadth) shall transit the Safety Zone.

(ii) No vessel greater than 630 feet in length and/or greater than or equal to 85 feet in beam shall transit the Safety Zone during period between sunset and sunrise.

(iii) No tankship greater than 550 feet in length shall transit the Safety Zone, either inbound or outbound, with a draft less than 18.0 feet forward and 24.0 feet aft.

(4) Restrictions when channel obstructed by vessel(s) moored at the Northeast Petroleum Terminal located downstream of the Chelsea Street Bridge on the Chelsea side, hereafter referred to as the Jenny Dock (approximate position 42–23–09 North, 071–01–31 West), or the Mobil Oil Terminal (approximate position 42–23–05 North, 071–01–31 West):

(i) When vessels are moored at both terminals, no vessel greater than 300 feet in length and/or greater than 60 feet in beam, shall transit the Safety Zone.

(ii) When a vessel with a beam greater than 60 feet is moored at either terminal, no vessel greater than 630 feet in length and/or greater than 85 feet in beam shall transit the Safety Zone.

(iii) When a vessel with a beam greater than 85 feet is moored at either terminal, no vessel greater than 550 feet in length and/or greater than 85 feet in beam shall transit the Safety Zone.

(5) Requirements for tug assistance.

(i) All tankships greater than 630 feet in length and/or greater than 85 feet in beam shall be assisted by at least four tugs of adequate horsepower.

(ii) All tankships greater than 450 feet but 630 feet or less in length and less than 85 feet or less in beam shall be assisted by at least three tugs of adequate horsepower.

(iii) All tug/barge combinations with a tonnage of over 10,000 Gross Tons (for the barge(s)), in all conditions of draft, shall be assisted by at least one assist tug of adequate horsepower.

(6) U.S. Certificated integrated tug/barge (ITB) combinations shall meet the requirements of a tankship of similar length and beam, except that one less assist tug would be required.

(7) Variances from the above standard must to approved in advance by the Captain of the Port of Boston, MA.

Dated: June 1, 1985.

Stephen J. Masse,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 85–15411 Filed 6–26–85; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Post Office Box Fee Group Application

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule is designed to eliminate inequities in the application of post office box fee groups. It eliminates using revenue units as a factor in determining post office box fees. By removing the revenue unit factor, and tying the fee group application to the level of free carrier delivery available, the fee more closely reflects the level or premium service above the level of free delivery. Various minor changes are also made for purposes of uniformity and consistency, such as to remove the term "post office box rent" and replace it with "post office box fee".

EFFECTIVE DATE: August 31, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Millsap, (202) 245–4565.

SUPPLEMENTARY INFORMATION: On March 1, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 8345) proposed changes to Parts 951 and 952 of the Domestic Mail Manual to carry out the purposes described in the Summary, above. Interested persons were invited to submit comments concerning the proposed changes on or before April 1, 1985. No comments were received.

Accordingly, the Postal Service hereby adopts, without substantive change, the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as set forth below:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 951—POST OFFICE BOX (P.O BOX) SERVICE

2. In 951.2 revise .22, .23, and .24 to read as follows:

951.2 Rental Fees.

* * * * *

.22 Rental fee Groups.

.221 General Provisions.

a. Customers at all facilities under the administration of the same post office are subject to the same post office box fees applicable at the main office. This includes any post office which has been discontinued and reestablished as a station or branch of another post office.

b. Customers who are eligible for Group 2 or Group 3 fees may be charged the lower fees only at their post office of address. If post office box service is desired at any other facility, Group 1 fees must be charged.

c. The qualification of a business, association, organization, church, or other institution to use a box in any fee group, will be determined separately from the qualification of any associated person.

.222 Fee Group Application.

a. Group 1 Fees.

(1) Customers at all facilities of city delivery post offices who are eligible for any kind of delivery by postal carrier must be charged Group 1 fees except as provided by 951.222c(1).

(2) Customers at post offices which establish city carrier delivery service must start paying Group 1 fees, subject to the exclusion of 951.222c(1), after the beginning of city carrier delivery.

(3) All customers who receive their mail at a mail processing facility which is not under the administration of a post office, must pay Group 1 fees.

b. Group 2 Fees.

(1) Customers at non-city delivery (NCD) offices must be charged Group 2 fees, except as provided by 951.222c(1).

(2) Customers at an NCD office who are eligible for city delivery service from another facility must pay Group 1 fees.

c. Group 3 Fees.

(1) Customers at all offices including community post offices who are ineligible for and do not receive any delivery by postal carrier must be charged the flat Group 3 fee for one box of any size. (Group 1 fees must be paid for any additional boxes used.)

(2) Customers who are eligible for Group 3 fees may receive the free general delivery service described in 951.24 if they choose not to use post office box service.

.23 Changes in Fees. Revised post office box fees may be required by a general fee change, by a change in carrier service, or by a change in the status of a postal facility. Revised post office box fees are effective on the date of the action which caused the change unless another date is specified in an official announcement. If a post office box fee is increased, no customer will be required to pay at the new rate until the end of the period, (annual or semi-annual), for which they have already paid.

.24 General Delivery. Customers who are eligible to use a post office box at Group 3 fees, but who in fact do not use a box, may receive no more than one separation in general delivery without time limit. Customers who are not eligible to use a post office box at Group 3 fees may not receive general delivery for periods longer than 30 days except as provided in 953.

PART 952—CALLER SERVICE

3. Revise 952.124 and 952.222b(2) to read as follows:

952.124 Caller Service at Group 2 non-city delivery offices is available only as provided in 952.222b(2).

* * * * *

952.222b(2) Caller Service will be provided for Group 2 non-city delivery offices only if a customer desires delivery through a post office box and either no post office box or no post office box of appropriate size is available. In that event, a single box number will be assigned and caller service provided. The caller fee will be the same amount as the box fee for the largest box at that facility.

Regular caller service fees are charged for any additional separations requested and to customers whose office of address is other than the Group 2 office.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–15379 Filed 6–26–85; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[WH–7–FRL–2855–8]

Reversion of Iowa Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Withdrawal of Approval of RCRA Interim Authorization for Iowa.

SUMMARY: This notice announces the voluntary transfer, to EPA, by the State of Iowa, of the hazardous waste management program responsibilities for which the State had previously received Phase I of Interim Authorization under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. On May 3, 1985 the Governor of Iowa signed into law an appropriations bill which ceases funding and suspends enabling legislation for the implementation of the RCRA hazardous waste management program in Iowa for a period of two years beginning July 1, 1985. Therefore, effective July 1, 1985 EPA will assume responsibility for directly administering and enforcing the RCRA program in Iowa. Effective July 1, 1985 all persons who generate, transport, treat, store or dispose of hazardous waste in Iowa must comply with all federal requirements and submit all required reports directly to EPA. Additional requirements, most notably the redefinition of solid waste, will also apply as discussed below. All inquiries and correspondence concerning the RCRA hazardous waste management program in Iowa should now be addressed to EPA.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Prior to August 1, 1985 call:.

Interim Status and General Information: Chet McLaughlin, Chief, State Programs Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (816) 374–6534.

Permits (Including Financial Requirements): Lynn Harrington, Chief, Permits Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (816) 374–6531.

Enforcement: Steve Wilhelm, Chief, Compliance Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (816) 374-7133.

After August 1, 1985 the telephone numbers above will no longer be operative. Call toll free 1-800-223-0425 after August 1.

For copies and interpretations of Iowa legistation, regulations and documents referred to in this notice contact: Ron Kolpa, Hazardous Waste Coordinator, Iowa Department of Water, Air and Waste Management, Henry A. Wallace Building, Des Moines, Iowa 50319, at 515-281-8925.

SUPPLEMENTARY INFORMATION:.

I. Background

A. Iowa RCRA Program History

On January 30, 1981, Iowa received Phase I of Interim Authorization under RCRA to conduct a State hazardous waste program in lieu of the federal program, encompassing a full range of program activities with the exception of permit issuance (46 FR 9948, January 30, 1981). The State elected to bypass the intermediate step of Phase II authorization and apply directly for final authorization. On March 1, 1983 Iowa requested an extension beyond the July 26, 1983 deadline for submitting an application for final authorization. The extension was granted and became effective July 25, 1983 (50 FR 35096, August 3, 1983). The extension allowed for continuation of Iowa's Phase I Interim Authorization until the State received final authorization; or no later than January 26, 1985. The Hazardous and Solid Waste Amendments of 1984 allowed a second extension of Iowa's Phase I interim authorization until January 31, 1986, or until the date the State receives final authorization whichever was earlier (50 FR 3342, January 24, 1985).

B. Suspension of Enabling Authority for a State RCRA Hazardous Waste Management Program by the Iowa Legislature

On May 3, 1985 House File 476, which establishes appropriations for various State agencies and boards, was signed into law by the Governor of Iowa. Section 12 of the bill establishes the appropriations for the Department of Water, Air and Waste Management (IDWAWM) for the State fiscal year 1986 (beginning July 1, 1985). Section 12, Subsection 5 states:

> It is the intention of the general assembly in adopting the appropriation under subsection 1 and this subsection to cease funding for the department's implementation of the federal Resource Conservation and Recovery Act permit program for hazardous waste facilities in this state. Section 455B.411, subsections 5, 8 and 9, section 455B.412, subsections 2 through 4, and sections 455B.413 through 455B.421 are suspended and do not apply as they pertain to that permit program, but are not suspended and do apply as they pertain to abandoned and uncontrolled sites, used oil and site licensing under chapter 455B, division IV, part 6. The suspension provided by this subsection begins July 1, 1985 and ends July 1, 1987.

The effect of this subsection is that, for a period of two years beginning July 1, 1985, the following sections of the Iowa Acts are suspended as they pertain to the federal RCRA hazardous waste management program:

1. *Section 455B.411, subsections 5, 8 and 9:* Defines manifest, storage, and treatment, respectively.

2. *Section 455B.412, subsections 2 through 4:* Provides the Water, Air and Waste Management Commission's duties to adopt rules for (1) characteristics and listing of hazardous waste, (2) generators, transporters, and storage, treatment or disposal facilities; and (3) certification of supervisory personnel and operators at hazardous waste treatment, storage and disposal facilities.

3. *Section 455B.413:* Establishes the duties of the Executive Director of the Water, Air and Waste Management Department, including permit issuance/denial/modification; certification of facility supervisory and operating personnel; and inspection and investigation of hazardous waste handlers and facilities.

4. *Section 455B.414:* Establishes the requirement for generators, transporters or owners or operators of treatment, storage and disposal facilities to notify IDWAWM of their hazardous waste handling activities.

5. *Section 455B.415:* Prohibits the operation of a facility for the treatment, storage or disposal of hazardous waste unless a permit is obtained; and establishes requirements for interim status, permit application contents, permit conditions, and permit appeals.

6. *Section 455B.416:* Establishes the Executive Director's access for inspections, copying records, sampling and monitoring; responsibility for confidential information; authority for orders; requirements of orders; and authority to conduct monitoring, testing or analysis and to seek reimbursement.

7. *Section 455B.417:* Provides the penalties and prohibited acts and includes all handlers, knowing violations, orders, corrective action, notification.

8. *Section 455B.418:* Provides for enforcement orders, appeals, emergency orders, referrals to the attorney general, responsibility of the attorney general and burden of proof.

9. *Section 455B.419:* Establishes responsibilities and rights concerned with agricultural chemical use and disposal.

10. *Section 455B.420:* Requires that the rules adopted by the Commission be consistent with and not exceed the federal rules and regulations.

11. *Section 455B.421:* Provides for judicial review of actions of the Commission or Executive Director.

By letter of June 5, 1985 the Executive Director of IDWAWM informed EPA of the voluntary reversion of the Iowa RCRA program. The letter referenced section 12 of House File 476 as follows:

> "Subsection 5 explicity identifies the intention of the general assembly to . . . 'cease funding for the department's implementation of the federal Resource Conservation and Recovery Act permit program for hazardous waste facilities in this state.' It is our interpretation that reversion of delegated federal authority is unavoidable in the face of this legislation and I hereby formally return our Phase I RCRA program authorization to you, effective July 1, 1985.
>
> Subsection 5 of House File 476 goes on to selectively and specifically suspend various hazardous waste program authorities previously granted to this agency. The purpose of these suspensions of authority is twofold: to remove any redundancies or duplications imposed on Iowa industries with respect to hazardous waste management facilities, and to retain this agency's authority in sufficient manner to allow for implementation and continuance of various programs of hazardous waste management outside the federal RCRA permit program. We will, therefore, have both cause and sufficient authority to interact with Iowa generators, transporters and facilities for such state program elements as abandoned and uncontrolled sites, used oil, site licensing, and hazardous waste fees. We will be in contact with those in Iowa impacted by these program elements and specifically instruct them on how they may comply with Iowa law and agency rule."

The Department's application for final authorization for the entirety of the federal hazardous waste program was also withdrawn.

II. Effect of Iowa Program Withdrawal of Approval on the Iowa Regulated Community

A. General

Effective July 1, 1985, only a limited hazardous waste management program will be in effect in Iowa. EPA will assume sole responsibility for directly administering and enforcing the federal RCRA program in Iowa. This includes,

but is not limited to, responsibility for defining hazardous waste, identification and provisional numbers issuance, permit issuance, establishment and enforcement of minimal standards, and inspection. Enforcement will be carried out in accordance with EPA's Enforcement Response Policy of December 21, 1984.

Beginning July 1, 1985, hazardous waste handlers in Iowa are required by law to comply with the Federal regulations in Title 40 of the Code of Federal Regulations, Parts 124, 260–265, and 270. All reports required by EPA regulations, all inquiries and all correspondence should be addressed to the appropriate EPA contacts given above or as otherwise required by law or regulation. IDWAWM's June 5 formal notice precludes EPA from giving public notice 30 days in advance of program withdrawal as recommended by 40 CFR 271.23(3). Since the majority of the federal hazardous waste management rules had been adopted by reference in Iowa (900-Chapter 141 of the Iowa Administrative Code), the abbreviated notice period is not expected to seriously affect the Iowa regulated community's compliance opportunities. For federal rules initially taking effect in Iowa upon the effective date of this withdrawal, EPA will exercise its enforcement discretion as described below in Part B.

The following federal requirements have been adopted by reference in Iowa: 40 CFR Part 260 as amended through March 26, 1984; 40 CFR Part 261 as amended through May 10, 1984; 40 CFR Part 262 as amended through March 26, 1984; 40 CFR Part 263 as amended through April 1, 1983; 40 CFR Part 264 as amended through June 30, 1983; 40 CFR Part 265 as amended through November 22, 1983; 40 CFR Part 270 as amended through April 24, 1984. Any revisions, corrections or amendments or additions published by EPA subsequent to the above dates go into effect in Iowa immediately upon program withdrawal (July 1, 1985). An index of current federal hazardous waste management regulations and **Federal Register** issuances may be obtained from the general information contact listed above.

Copies of the Code of Federal Regulations are available for sale in two volumes (Parts 100 to 149 and Part 190 to 399) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies also may be obtained from the Kansas City Government Bookstore, Number 120 Bannister Mall, 5600 East Bannister Road, Kansas City, Missouri 64137–2902. Copies of the EPA Enforcement Response Policy can be obtained from the enforcement contact listed above.

EPA and IDWAWM are in the process of entering into a Letter of Understanding which describes communications and information exchange between the two agencies following program reversion. A copy of the Letter of Understanding can be obtained from the general information contact person listed above.

B. Specific

1. Notification of Hazardous Waste Activity Under the Redefinition of Solid Waste

A revised definition of solid waste was promulgated by EPA on January 4, 1985 (50 FR 614, January 4, 1985). The rule defined which materials are solid wastes when disposed of, burned, incinerated, or recycled. The major part of the regulation addressed the question of which secondary materials being recycled (or held for recycling) are solid wastes and, if hazardous, hazardous wastes. The Agency also published regulatory standards for various types of hazardous waste recycling activities. Technical corrections to the rule were published in the **Federal Register** on April 11, 1985 (50 FR 14216, April 11, 1985).

a. *Notification Requirements.* The solid waste definition requires any person who generates, transports, treats, stores, or disposes of hazardous wastes that are covered by the new regulations to notify EPA or a State authorized by EPA to operate the hazardous waste management program of their activities by April 4, 1985 unless these persons have previously notified EPA or an authorized State and have not withdrawn their notification. Notification instructions are set forth in 40 FR 12746, February 26, 1980.

b. *Part A Requirements.* Facilities which treat, store, or dispose of hazardous waste covered by the January 4th rule, and that wish to be eligible or remain eligible for interim status under section 3005(e) of RCRA for the wastes covered by that rule, were required to also file with EPA or an authorized State a new or amended Part A permit application by July 5, 1985. Facilities which have qualified for interim status under section 3005(e)(1)(A)(i) as redesignated by the Solid and Hazardous Waste Amendments of 1984 are required to submit an amended Part A permit application. Facilities which were in existence on January 4, 1985, the date of promulgation of the redefinition of solid waste, and which had not previously obtained interim status but now find themselves regulated by the new rule can qualify for interim status under section 3005(e)(1)(A)(ii) by submitting an initial Part A permit application by the prescribed date and complying with the notification requirements described above.

Those facilities which are located in States which do not have permit programs authorized by EPA (i.e., Iowa) are required to submit their new or amended Part A permit applications to EPA by July 5, 1985.

c. *Additional Provisions.* In addition to the notification and Part A permit application requirements, the January 4th regulation has additional regulatory provisions which become effective July 5, 1985. Prior to the withdrawal action, these provisions would not have become immediately effective in Iowa. Due to this withdrawal, these provisions will become effective in Iowa on July 5, 1985.

d. *Applicability to the Iowa Regulated Community.* Effective July 1, 1985 by virtue of EPA's assumption of primary responsibility for operating the RCRA hazardous waste management program in Iowa, the redefinition of solid waste regulation becomes applicable to the Iowa regulated community in its entirety on July 5. Therefore, those persons who generate, treat, store, or dispose of hazardous wastes covered by the January 4th rule, and which did not notify under section 3010(a) of RCRA by April 4, 1985 as described above, cannot legally generate or transport those wastes. Similarly, those facilities which treat, store or dispose of wastes covered by the January 4th rule which do not comply with the notification requirements and/or did not submit a new or amended Part A application in accordance with 40 CFR 270.10(g) by July 5, 1985 cannot legally obtain interim status for the waste covered by this rule.

However, in recognition of the fact that the initial regulation and preamble may have caused some uncertainty in the regulated community—since clarified by the April 11 technical corrections—and the further uncertainty created by pending program withdrawal, EPA will exercise its enforcement discretion to allow those facilities in Iowa which treat, store or dispose of hazardous waste covered by the January 4 rulemaking and which are otherwise meeting federal statutory and regulatory requirements including section 3005(e) of RCRA, the 40 CFR Part 265 requirements for interim status, and the

permit application requirements found in 40 CFR 270.10(e) (2) and (3) to continue to operate as if they had achieved/maintained interim status provided they submit a completed EPA notification form (EPA Form 8700–12) by August 27, 1985 and a new or revised Part A application by 90 days after notification submission date. Similarly, EPA will exercise its enforcement discretion toward those persons in Iowa who generate or transport hazardous waste, provided they are in compliance with federal statutory and regulatory requirements including section 3010(a) of RCRA and 40 CFR Parts 262 and 263, respectively, and submit a completed EPA notification form August 27, 1985.

Hazardous waste handlers should examine their practices carefully to determine if a change in status (e.g., a person who treats, stores or disposes may now also generate and vice versa) is required. Status changes require new or amended notifications in accordance with 45 FR 12746, February 26, 1980, and/or new or amended Part A applications in accordance with 40 CFR Part 270.

Copies of the redefinition of solid waste rule and the April 11 technical corrections can be obtained from the general information contact person listed above.

2. Hazardous and Solid Waste Amendments of 1984

On November 8, 1984 the Hazardous and Solid Waste Amendments (HSWA) were enacted and are currently applicable to hazardous waste handlers in Iowa. The Uniform Hazardous Waste Manifest (EPA Form 8700–22) will be in use. A summary of the 1984 amendments to RCRA and copies of the Uniform Hazardous Waste Manifest may be obtained from the general information contact listed above. Copies of the HSWA are for sale at the U.S. Government Printing Office and the Government Bookstore at the addresses given above.

3. Small Quantity Generators

The HSWA require that, effective August 5, 1985, any hazardous waste which is part of a total quantity generated by a generator generating greater than 100 kilograms but less than 1000 kilograms during one calendar month, and which is shipped off the premises on which such waste is generated, shall be accompanied by a copy of the EPA Hazardous Waste Manifest form signed by the generator. Copies of the EPA Hazardous Waste Manifest form the may be obtained from general information contact person listed above.

Those Iowa generators who find themselves eligible for the small quantity generator exclusion in the Federal Program should consult IDWAWM to determine if State rules still in effect would impact their waste management activities.

4. Financial Responsibility

Owners and operators of treatment, storage and disposal facilities, when renewing financial documents in accordance with 40 CFR Part 264 and 40 CFR Part 265 Subpart H, should designate the "Environmental Protection Agency, Region VII" as beneficiary. All evidences of compliance should be provided to the EPA financial responsibility requirements contact person listed above. A separate letter will be sent to each of the regulated firms with Letters of Credit or Financial Guarantee Bonds explaining their responsibilities.

Regulatory Flexibility Act

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this notice will not have a significant economic impact on a substanital number of entities. This notice announces to the public the withdrawal of the Iowa hazardous waste management program. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties and Confidential business information.

Authority

This notice is issued under the authorty of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6912(a), 6926, 6974(b)].

Dated: June 20, 1965.

Morris Kay,

Regional Administrator, EPA Region VII.

[FR Doc. 85–15406 Filed 6–26–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–35, 101–36 and 101–37

[FPMR Amendment F–59]

Removal From Chapter 101 of Subchapter F, ADP and Telecommunications

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule.

SUMMARY: This regulation removes automatic data processing (ADP) and telecommunications management provisions from the Federal Property Management Regulations (FPMR). The purpose is to remove regulatory provisions that have been superseded by the Federal Information Resources Management Regulation (FIRMR) (41 CFR Chapter 201).

EFFECTIVE DATE: June 27, 1985.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) Governmentwide regulations regarding Federal management, acquisition, and use of information resources were integrated into a new regulation, the FIRMR, effective April 1, 1984 (49 FR 20994, May 17, 1984). Amendment 1 to the FIRMR, effective April 1, 1985 (50 FR 4322, January 30, 1985) included the publication of the policies and procedures that were originally published in Subchapter F of the FPMR in a new integrated structure. Subchapter F provisions (Parts 101–35, 101–36, 101–37, and Appendix to Subchapter F) are no longer effective.

(2) Special category contracting provisions, formerly published in the Federal Procurement Regulations (FPR) at Subparts 1–4.11, 1–4.12 and 1–4.13, have also been superseded by the FIRMR. Because contracts continue to exist which were written in accordance with FPR provisions, removal of those subparts from the FPR is being delayed.

(3) As listed in Appendix C of the FIRMR looseleaf edition, certain FPMR F series information and guidance (non-regulatory) bulletins continue to be current. This regulation action does not affect the status of FPMR F series bulletins.

(4) Notice of proposed rulemaking regarding this amendment was published in the **Federal Register** (50 FR 23453, June 4, 1985). Notwithstanding

this action, it has been determined that the regulation has neither a significant effect nor a significant cost or administrative impact on agencies or contractors or offerors, pursuant to sec. 302 of Pub. L. 98-577 [Small Business and Federal Procurement Competition Enhancement Act of 1984]. Therefore, in the interest of economy and efficiency in the publication of the annual update of Title 41 of the CFR, the rule is being published prior to the close of the comment period specified in the referenced notice.

(5) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Parts 101-35, 101-36, and 101-37

Government information resources activities, ADP and telecommunications management.

SUBCHAPTER F—[REMOVED AND RESERVED]

Pursuant to Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), 41 CFR Chapter 101 is amended by removing and reserving Subchapter F—ADP and Telecommunications, consisting of Part 101-35—ADP and Telecommunications Management Policy, Part 101-36—ADP Management, Part 101-37—Telecommunications Management, and Appendix to Subchapter F—Temporary Regulations.

Dated: June 19, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-15382 Filed 6-26-85; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[FCC 85-256]

Organizational and Procedural Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends various sections of the Commission's Rules to: (1) Reflect the reduction in the number of Commissioners; (2) delete references to the Telecommunications Committee and Telegraph and Telephone Committee; and (3) reflect the transfer of the function of the Office of Opinions and Review to the Office of General Counsel.

This action is taken by the Commission in efforts to eliminate and/or revise misleading sections of the rules.

EFFECTIVE DATE: July 8, 1985.

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

FOR FURTHER INFORMATION CONTACT: Chris Philpot, Office of General Counsel (202) 254-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

Order

In the matter of Amendment of §§ 0.1, 1.51(a)(3), 1.51(b), and 1.419 of the Commission's rules to reflect the reduction in the number of Commissioners from seven to five and to correct a typographical error; Amendment of §§ 0.91(h) and 0.210(a)(1) to delete reference to the Telecommunications Committee and the Telegraph and Telephone Committee; Amendment of §§ 0.5(a) 11, 0.5(b)(2), 5, and 1.1205(b) to reflect the transfer of the functions of the Office of Opinions and Review to the Office of General Counsel and to make conforming changes to these Commission rules.

Adopted: May 13, 1985.

Released: May 31, 1985.

By the Commission.

1. In 1982, Congress reduced the number of Commissioners of the Federal Communications Commission from seven to five.[1] Sections 0.1, 1.51(a)(3), 1.51(b) and 1.419 are hereby amended to reflect that reduction. Section 1.51(b) is also hereby amended to correct a typographical error.

2. Section 0.1 of the Commission's rules, which specifies the number of Commissioners, is hereby revised to state that the Commission is composed of five members.

3. Sections 1.51(a)(3) and 1.51(b) of the Commission's rules govern the number of copies of pleadings, briefs, and other papers which must be filed with the Commission. The number of copies currently required is based on the assumption that the Commission is composed of seven members. Therefore, these rules are hereby revised to reflect the correct composition of the Commission.

4. Section 1.419(b) of the Commission's rules governs the number of copies of comments to be filed in rulemaking proceedings. That rule is hereby amended to reflect the reduction in the number of Commissioners.

5. The typographical error in § 1.51(b) is hereby corrected. Currently § 1.51(b) reads in pertinent part as follows: "Participants filing the required six copies who also wish each Commission to have a personal copy . . ." By this Order, the word "Commission" is changed to "Commissioner".

6. The Commission recently abolished the Telecommunications Committee. Subsection (h) of § 0.91 of the Commission's rules, which enumerates various functions of the Common Carrier Bureau, states that the Bureau

> (h) Carries out the functions of the Commission or the Telecommunications Committee under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.291.

7. In view of the dissolution of the Telecommunications Committee, the phrase "or the telecommunications Committee" is deleted from § 0.91(h).

8. The Commission has also disbanded the Telegraph and Telephone Committee. Subsection (1) of § 0.201(a) of the Commission's rules, which sets forth delegations of certain powers of the Commission, specifies that

> This category also includes delegations to individual Commissioners or committees of commissioners, such as the Telegraph and Telephone Committee.

9. In view of the dissolution of the Telegraph and Telephone Committees, the phrase "such as the Telegraph and Telephone Committees" is deleted from Rule § 0.201(a)(1), and a period is inserted in lieu of the comma after the word "commissioners" in the penultimate line of that secton.

10. By order released November 9, 1981, FCC 81-519, the functions of the Office of Opinions and Review were transferred to the Office of General Counsel. Therefore, §§ 0.5(a)(11), 0.5(b)(2), 0.5(b) 5, and 1.1205(b), which refer to the Office of Opinions and Review, must be amended to reflect that change.

11. Section 0.5 of the Commission rules contains a general description of the organization and operations of the Commission. Section 0.5(a) sets forth the principal staff units, and Subsection (11)

[1] Omnibus Budget Reconciliation Act of 1982, Pub. L. No. 97-253, 94 Stat. 763 (1982).

thereof lists the Office of Opinions and Review as one of those units. In view of the dissolution of that office, Subsection (11) is hereby deleted and the subsequent subsections renumbered to reflect the deletion.

12. Section 0.5(b) sets forth the responsibilities and functions of the Commission staff. Subsection 0.5(b)(2) states that ". . . the preparation of Commission opinions in hearing cases is primarily the responsibility of the Office of Opinions and Review . . . ." That subsection is hereby amended to state that the preparation of "opinions in hearing cases is primarily the function of the Office of General Counsel."

13. Section 0.5(b)(5), which sets forth the responsibilities of various staff components for decisions in hearing cases, specifies certain obligations of the Office of Opinions and Review. The references to that office are hereby changed to refer to the Office of General Counsel.

14. Section 1.1205 enumerates Commission decisionmaking personnel in the case of restricted adjudicative proceedings. The reference in § 1.1205(b) to the Chief of the Office of Opinions and Review and his staff is deleted and the subsequent subsections renumbered to reflect that decision.

15. We find that prior notice and comment procedures are unnecessary to implement the rule amendments in the attached Appendix because the amendments involve general rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3)(A).

16. In view of the foregoing and pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective July 8, 1985.

17. For further information contact Chris Philpot, Office of General Counsel, (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

§ 0.1 [Amended]

2. The phrase "7 members" in 47 CFR 0.1 of the rules and regulations of the Federal Communications Commission is changed to "5 members".

§ 0.91 [Amended]

3. The phrase "or the Telecommunications Committee" is deleted in § 0.91(h) of the Commission's rules and regulations.

§ 0.5 [Amended]

4. Section 0.5(a)(11) is deleted and §§ 0.5(a) (12) and (13) of the Commission rules and regulations are redesignated as §§ 0.5(a) (11) and (12), respectively.

5. The phrase "Opinions and Review" in § 0.5(b)(2) of the Commission's rules and regulations is changed to "General Counsel".

6. The phrase "Opinion and Review, which appears twice in § 0.5(b)(5) of the Commission's rules and regulations, is changed to "General Counsel" both times it appears.

§ 0.20 [Amended]

7. The phrase "such as the Telegraph and Telephone Committees" is deleted in § 0.201(a)(1) of the Commission's rules and regulations, and a period is inserted in lieu of the comma which appears after the word "commissioners, which is hyphenated between the eighth and ninth line thereof.

PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

§ 1.51 [Amended]

9. In § 1.51(a)(3) the number of copies of papers filed relating to matters to be acted on by the Commission is changed from "16" to "14".

10. The number of Commissioners in § 1.51(b) of the Commission's rules and regulations is changed from "7" to "5" and the distribution of the total number of copies, on the fourth line below the number of Commissioners, is changed from "12" to "10".

11. The word "Commission" is changed to "Commissioner" in the sentence in § 1.51(b) reading "Participants filing the required six copies who also wish each Commission to have a personal copy . . . ."

§ 1.419 [Amended]

12. The number of Commissioners in § 1.419(b) of the Commission's rules and regulations is changed from "7" to "5" and the distribution of the total number of copies, on the fourth line below the number of Commissioners, is changed from "12" to "10".

§ 1.1205 [Amended]

13. Section 1.1205(b) of the Commission rules and regulations is deleted and paragraphs (c), (d), (e), (f), and (g) thereof are redesignated as (b), (c), (d), (e), and (f) respectively.

[FR Doc. 85-15114 Filed 6-26-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends 47 CFR Part 73 of the FCC Rules. Amendments are made to relax the requirements for determining TV aural power. This action is necessary to eliminate unnecessary regulations.

EFFECTIVE DATE: June 27, 1985.

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

FOR FURTHER INFORMATION CONTACT: Howard Irvin, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Order

In the matter of oversight of the Radio and TV Broadcast Rules.

Adopted: June 11, 1985.
Released: June 13, 1985.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its TV broadcast rules. Modifications are made herein to clarify the Commission's rules concerning TV aural transmitter power measurement procedures.

2. The Commission has received several informal comments from TV station operators and broadcasters regarding our current meter calibration requirements for determining TV aural power levels. They have indicated that these requirements are burdensome and extremely difficult, if not impossible, to comply with. We have reviewed these requirements and concur with their concerns. Therefore we are relaxing our Rules to permit TV licensees to determine the aural transmitter power levels in any manner that will assure operation at authorized power levels.

3. No substantive changes are made herein which imposes additional burdens or remove provisions relied

upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedures thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Notice of Proposed Rule Making is not required, consequently the Regulatory Flexibility Act does not apply.

6. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective upon publication in the **Federal Register**. This action is taken by the Chief, Mass Media Bureau under the authority delegated in §§ 0.61 and 0.283 of the Commission's Rules.

7. It is further ordered, that this proceeding is terminated.

8. For further information on this *Order* contact Howard Irvin, (202) 632-9660, Mass Media Bureau.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

Title 47 Part 73 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Statute 1066 and 1082, as amended. (47 U.S.C. 154 and 303).

2. 47 CFR 73.663 is amended by revising paragraph (a); by removing paragraphs (c)(1), (2), and (3), and the Note following; by redesignating paragraphs (d)(1), (2), (3), as paragraphs (c)(1), (2), (3); by revising the caption of the newly designated paragraph (c) and paragraph (c)(3)(i); and by adding a new Note following paragraph (c)(3)(iii) to read as follows:

§ 73.663 Determining operating power.

(a) The operating power of each TV visual transmitter shall normally be determined by the direct method.

* * * * *

(c) Indirect method, visual transmitter.

* * *

(3) * * *

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures described in paragraph (b) of this section or the most recent measurements made by the licensee establishing the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC and also retain with the station records the measurement data used as a basis for determining the value of F.

* * * * *

Note: Refer to § 73.1560 for aural transmitter output power levels.

3. 47 CFR 73.688 is amended by revising paragraph (a) to read as follows:

§ 73.688 Indicating instruments.

(a) Each TV broadcast station shall be equipped with indicating instruments which conform with the specifications described in § 73.1215 for measuring the operating parameters of the last radio stage of the visual transmitter, and with such other instruments as are necessary for the proper adjustment, operation, and maintenance of the visual transmitting system.

* * * * *

4. 47 CFR 73.1560 is amended by revising paragraph (c)(2) to read as follows.

§ 73.1560 Operating power tolerances.

(c) *TV stations.* * * *

(2) The output power of the aural transmitter shall be maintained to provide an aural carrier ERP not to exceed 22% of the peak authorized visual ERP.

* * * * *

§ 73.1690 [Amended]

5. 47 CFR 73.1690 is amended by removing paragraph (c)(4) in its entirety.

[FR Doc. 85-14703 Filed 6-26-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Astragalus Humillimus To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Astragalus humillimus* (Mancos milk-vetch), to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. *Astragalus humillimus* is presently known from four populations west of Waterflow, San Juan County, New Mexico. The plant was collected in Montezuma County, Colorado, in 1875; however, the species has not been re-collected there since that time. This species is vulnerable due to a low number of plants, restricted distribution, a low tolerance for disturbance, and close proximity to powerline corridors, roads, and oil wells. This determination of *Astragalus humillimus* to be an endangered species implements the protection provided by the Act.

DATE: The effective date of this rule is July 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Region 2 Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Astragalus humillimus Gray *ex* Brandegee is a member of the Fabaceae (pea family). The species was collected once by Brandegee in 1875 and was described by Asa Gray in 1876. Kuntze named this plant *Tragacantha humillima* in 1891, Rydberg (1905) changed the name to *Phaca humillima*, and Barneby recognized it in the genus *Astragalus* in 1964 (Barneby, 1964; Knight, 1981).

Astragalus humillimus has short stems measuring 0.5 to 1 centimeter tall (0.2-0.4 inch). It is a perennial species with compound leaves (having many leaflets) measuring 8 to 15 millimeters long (0.3-0.6 inch). The leaflets are pubescent, 0.7 to 2 millimeters (0.02-0.08 inch) long, light green, and oval. The flowers are lavender with white veins, are about 1 centimeter (0.4 inch) long, and have a sweet pungent smell. The fruit is an oblong pod about 5 millimeters (0.2 inch) long. This species grows in low, tufted mats 31 to 45 centimeters (12-18 inches) in diameter. These clumps are often covered with butterflies, and *Vanessa cardui* (painted lady butterfly) has been identified as a

pollinator of *Astragalus humillimus* (Paul Knight, New Mexico Natural Resources Department, pers. comm., 1983). Flowering occurs only for a short time, between late April and early May. Most fruits ripen by early June.

Astragalus humillimus is known only from a ridge west of Waterflow, New Mexico. The four populations occur on Bureau of Land Management (BLM) and Navajo Indian Reservation lands and contain approximately 7,000 plants. The plants are restricted to Point Lookout and Cliff House sandstones, tan Cretaceous sandstones of the Mesa Verde series, at an elevation of 1,545 to 1,645 meters (5,068–5,396 feet). The *Astragalus* forms rings in depressed pockets of sandy soil. Two of the populations are on Point Lookout sanstone mesas, one is on island outcrops of Point Lookout sandstone, and the other appears to occur on Cliff House sandstone (O'Sullivan and Beikman, 1963). Dominant associated plants are *Oryzopsis hymenoides, Gutierrezia sarothrae, Yucca angustissima,* and *Artemisia tridentata. Astragalus humillimus* occurs in the vicinity of utility corridors, drilling pads, oil wells, pipelines, and roads; additional construction and maintenance of these could destroy or severely affect the populations.

Astragalus humillimus was first collected in 1875 in Montezuma County, Colorado, but no plants have ever been relocated at the type locality. The first Federal action involving *Astragalus humillimus* was on June 16, 1976, when the Service published a proposed rule in the **Federal Register** (41 FR 24524) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. *Astragalus humillimus* was included in the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17910).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796).

Astragalus humillimus was included as a category-1 species in a list of plants under review for threatened or endangered classification, published in the December 15, 1980, **Federal Register** (45 FR 82480) plant notice of review. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the biological appropriateness of their being proposed to be listed as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, plant notice of review were considered to have been petitioned, and the deadline for a finding on those species, including *Astragalus humillimus*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Astragalus humillimus* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. The Service published a proposed rule to list *Astragalus humillimus* as an endangered species on June 28, 1984 (49 FR 26610). This proposed rule constituted the finding that the petitioned action was warranted and proposed to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the June 28, 1984, proposed rule (49 FR 26610) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Farmington Daily Times* on July 24, 1984, which invited general public comment. Six comments were received and are discussed below. No public hearing was requested or held.

The international Union for Conservation of Nature and Natural Resources had no specific comments on *Astragalus humillimus*, but supported the proposal. The National Park Service stated that it had no comments since the species does not occur on its lands.

The San Juan County Commission opposed the listing because of the belief that it will cause "additional complications in completing environmental impact assessments for economic development projects" and because it is "non-beneficial vegetation for sheep and wildlife grazing, and . . . it would be more beneficial if it were supplanted by more nutritious and palatable varieties of plants." The Service responds that the determination to list *Astragalus humillimus* was made solely on the basis of the best scientific and commercial data available and not on the basis of whether the plant is beneficial forage for sheep and wildlife nor on the basis of whether the plant listing may cause complications for development.

The BLM had no objection to the listing. However, it did state that the listing "may cause a conflict between its [*Astragalus humillimus*] protection and programs currently authorized by the Bureau of Land Management (BLM)," specifically "rights-of-way for transmission line and leases for the development of oil and gas and other minerals." The BLM stated that care will have to be taken to consider the species and recommended that it and the Service work closely in "devising species protection measures, authorizing resource development and managing previously authorized land uses." The Service agrees with BLM's comments. The BLM also stated that there is a small population of the Mancos milk-vetch on BLM-administered lands. This information has been incorporated into the final rule.

The Bureau of Indian Affairs (BIA) raised a number of issues concerning surveys, habitat, and managing agency jurisdiction, and concluded "that too little information has been provided to warrant supporting this action at this time" and suggested that the Service conduct more extensive surveys of the species and its habitat. Considering the low number of plants and the easy accessibility to them it would be detrimental to the species to publish specific locality data. Extensive surveys by helicopter and ground have been conducted by Betty Kramp and Paul Knight (New Mexico Natural Resources Department), Rupert Barneby (New York Botanical Garden), Stanley Welsh (Brigham Young University), and William Weber (University of Colorado). The Service believes that sufficient information was obtained from these surveys to warrant listing the species. Locality data and management information will be provided to the Bureau of Indian Affairs.

In an October 18, 1984, telephone conversation with Mark Porter of Ecosphere Environmental Services, the Service was informed of a new population of approximately 100 plants. The population occurs 10.5 kilometers (6.5 miles) northwest of the northernmost previously known population and extends about 90 meters (300 feet) along a south-facing cliff. This population is on Navajo Indian

Reservation land and the new information has been incorporated into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus humillimus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus humillimus* Gray *ex* Brandegee (Mancos milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Astragalus humillimus* was collected in 1875 in Montezuma County, Colorado, near Mancos Canyon; however, it has not been collected there since 1875. Rupert O. Barneby, an authority on *Astragalus*, has searched for the species in the Four Corners area and was unable to locate the population at the type locality or any other populations of the plant. William C. Weber and S.L. Welsh also conducted extensive searches for this species (Knight, 1981). The species had not been seen or collected until Betty Kramp collected it on the Hogback, area west of Waterflow, New Mexico, in 1980. Paul Knight surveyed similar habitat from Mancos Canyon, Colorado, south to the southern end of the Hogback. He discovered two more populations north of Kramp's population. The plant is restricted to the Point Lookout and Cliff House sandstones, although it is not known what chemical or physical properties of these substrates the species is responding to (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983).

Presently, *Astragalus humillimus* occurs along a 10-mile section of the Hogback. The northernmost population consists of approximately 100 plants and extends along a south-facing cliff on Navajo Indian Reservation land (Mark Porter, Ecosphere Environmental Services, pers. comm., 1984).

The second and largest population with approximately 5,000 plants is located on an extensive mesa top of Point Lookout sandstone in an area being actively explored and drilled for energy-related minerals. The estimated area of this population is approximately 8.5 hectares (21 acres). The Navajo Indian Tribe owns the land and the surface rights to it; the leasable mineral rights are privately owned. The *Astragalus humillimus* population is situated in an oil field and is flanked on three sides by active oil wells. The number of roads, oil wells, and pipelines is increasing. The entire area is dissected by an unorganized assemblage of roads associated with the oil development.

A third population occurs on the west side of the Hogback about 2 miles south of the second population. There are approximately 1,000 plants scattered throughout this population, which is situated on island outcrops of Point Lookout sandstone. This population is bisected by the Glen Canyon-Shiprock 230 kV and the Curicanti-Shiprock 230 kV transmission lines, which were constructed in 1962 and 1963, respectively. The U.S. Bureau of Reclamation contracted the construction of both lines and transferred ownership, operation, and maintenance responsibilities to Western Area Power Administration (WAPA) in 1977 when the Department of Energy was organized (Gabiola, WAPA, pers. comm., 1983).

During construction of these two transmission lines, the National Environmental Policy Act (NEPA) was not in effect, and impacts to the environment were mitigated only as deemed prudent during construction (Gabiola, WAPA, pers. comm., 1983). *Astragalus humillimus* is a very localized species and does not tolerate disturbance well. The land directly under the powerline towers was extensively disturbed during the original construction, and the plant has not repopulated the disturbed areas of suitable habitat during the past 20 years.

The plants underneath the powerline have been driven over by either maintenance vehicles or off-road recreational vehicles. The damage caused by the vehicles is not yet extensive, but could become so in the future. An upgrading of the transmission line is scheduled to be in service by 1987. This would involve the addition of two more legs for each tower along the line and reconductoring of the entire line. Work will probably begin in 1985 (McBride, WAPA, pers. comm., 1983). The Western Area Power Administration is aware of the presence of *Astragalus humillimus* in the right-of-way and is considering the species in its planning process.

Some of the land upon which the third population occurs is owned by the Navajo Indian Tribe and the remainder is public land administered by BLM. The BIA is the surface managing agency on Indian lands. The BLM grants leases for the development of oil and gas and other minerals on its public lands. At present, there are no existing oil wells.

The fourth and southernmost population of *Astragalus humillimus* is on the east side of the Hogback south of Highway 550. This population occurs on sandstone ledges of the Navajo Reservation. Some of the mineral rights in the area in which this population occurs are under the jurisdiction of BLM; however, there are currently no oil wells in the area. It is possible that the area will be explored within the next year prior to the expiration date of the leases that have been granted by BLM.

The BLM must be notified before exploration, drilling, or construction occurs on lands leased by it. Most of the land around all the *Astragalus* populations is leased; thus, the possibility of future exploration and drilling is high (Knight, 1981, and pers. comm., 1983; Moore, BLM, pers. comm., 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Astragalus humillimus* is not currently sought for commercial, recreational, or educational purposes. The species is sought for scientific purposes. To date, this has not been shown to be a significant problem but the potential for a problem is great. This species has eluded the repeated searches of many botanists and there are very few good specimens in herbaria throughout the country. The species' existence is very vulnerable because of the low number of plants, and taking would be detrimental to the populations. The plants are easily accessible by road to collectors and vandals.

C. *Disease or predation.* There is no evidence that disease, predation, or grazing have adverse impacts on *Astragalus humillimus.* Sheep are grazed in the vicinity of three of the populations, but grazing of the plants themselves probably does not occur because of the spinescent nature of the petioles (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983).

D. *The inadequacy of existing regulatory mechanisms. Astragalus humillimus* is not protected by New Mexico State law. A permit is needed, however, from the Navajo Tribe for plant study or collection on the Reservation. Tribal protection is not enough to ensure survival since it offers no habitat protection.

E. *Other natural or manmade factors affecting its continued existence.* The

low number of plants in only four known populations increases the possibility that one catastrophic disturbance could destroy a significant portion of the species. The disturbance could result from natural or manmade causes, such as a construction project (Knight, 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Astragalus humillimus* as endangered. Endangered status seems appropriate because there are only four populations of this species and they exist in an area being developed intensively for energy resources (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983). Also, *Astragalus humillimus* is not afforded any protection by the State of New Mexico. Critical habitat is not being determined for this species (see Critical Habitat section).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. No benefit to *Astragalus humillimus* can be identified that would outweigh the threats of taking or vandalism that might result from the required publication of detailed critical habitat descriptions. The Navajo Indian Tribe, BLM, BIA, and WAPA are aware of the locations of the populations, have acknowledged the threats to the Mancos milk-vetch, and are actively considering the species during planning. Therefore, no further benefits would accrue to *Astragalus humillimus* by critical habitat designation. Because of the low number of plants, the easily accessible populations, and the scientific curiosity regarding *Astragalus humillimus*, it would be detrimental to the species to publish critical habitat descriptions and maps.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and the prohibitions against taking, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Astragalus humillimus is known to occur only on Navajo Indian Reservation and BLM lands. Known Federal activities that may be affected by this determination are maintenance of existing transmission lines and authorization of the planned upgrading of the existing 230 kV transmission lines by WAPA, Department of Energy. The BLM grants rights-of-way for transmission lines, and leases for the development of oil and gas and other minerals in the area; such activities would be subject to section 7 consultation. The BIA is the surface managing agency on Indian lands and would be subject to section 7 consultation if any of its actions may affect *Astragalus humillimus*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Astragalus humillimus*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Astragalus humillimus* is not known to exist. It is anticipated that few trade permits will ever be sought or issued, since this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Astragalus humillimus*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Astragalus humillimus* is known only from the Navajo Indian Reservation (BIA) and BLM lands. It is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Evironmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Barneby, R.C. 1964. Atlas of North American *Astragalus*. Memoirs of the New York Botanical Garden. Vol 13, Part II.

Knight, P.J. 1981. Rare, threatened, endangered, and other plants of concern in the BLM Chaco-San Juan Planning area of northwestern New Mexico. Department of Natural Resources, Heritage Program, Santa Fe, New Mexico.

O'Sullivan, R. B., and H.M. Beikman. 1963. Geology, Structure, and Uranium deposits of the Shiprock Quadrangle, N.M. & Az. U.S.G.S. Miscellaneous Geologic Investigation Map I—345.

Rydberg, P.A. 1905. *Astragalus* and its segregates in Colorado. Bulletin of the Torrey Botanical Club. 32: 657–665.

Authors

The primary authors of this final rule are Peggy Olwell and Alisa Shull, Endangered Species Office, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor was E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975). Status information was provided by Mr. Paul J. Knight, New Mexico Department of Natural Resources, Heritage Program, Sante Fe, New Mexico 87501.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*	*	*
Astragalus himillimus	Mancos milk-vetch	U.S.A. (CO,NM)	E	186	NA	NA
*	*	*	*	*	*	*

Dated: June 18, 1985

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-15390 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule Listing the Tar River Spiny Mussel (Elliptio (Canthyria) Steinstansana) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Tar River spiny mussle (*Elliptio* (*Canthyria*) *Steinstansana*) to be an endangered species. The species is currently known to be restricted to approximately 12 miles of the Tar River in Edgecombe County, North Carolina. Since the species has a restricted distribution, any factor that degrades water or substrate quality in this short river reach, such as land use changes, chemical spills, and increases in agricultural and urban runoff, could threaten the mussel's survival. This action will implement the protection provided by the Endangered Species Act of 1973, as amended, for the Tar River spiny mussel.

EFFECTIVE DATE: The effective date of this rule is July 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (794/259-0321 or FTS 672-0321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Tar River spiny mussel was first discovered in the Tar River, Edgecombe County, North Carolina, by Dr. Carol B. Stein in 1966. The species was subsequently recorded from the Tar River in Nash, Edgecombe, and Pitt counties, North Carolina (Shelley, 1972; Johnson and Clarke, 1983). The species was described by Johnson and Clarke (1983) as *Elliptio* (*Canthyria*) *Steinstansana*.

Data on the historical distribution of the Tar River spiny mussel are limited. However, it can be inferred from available records that the species inhabited the Tar River from Pitt County near Falkland, North Carolina, upstream through Edgecombe County to Spring Hope, Nash County, North Carolina as recently as 1966. According to recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers in North Carolina, the known Tar River spiny mussel population (estimated at 100 to 500 individuals) is restricted to about 12 miles of the Tar River in Edgecombe County, North Carolina.

Aside from the Tar River spiny mussel, only two other freshwater spined mussels are known to exist: a small-shelled and short-spined species, *Fusconaia collina*, found only in the James River system in Virginia, and a large-shelled and long-spined species, *Elliptio* (*Canthyria*) *spinosa*, collected only from the Altamaha River system in Georgia. The shell size and spine length of the Tar River species is intermediate between these two species.

Because of its rarity, little is known of the Tar River spiny mussel's biology. The species has been collected on sand and mud substrates, and it has been suggested that the mussel's spines help it maintain an upright position as it moves through the soft substrate. Like other freshwater mussels, it feeds by filtering food particles from the water. Related species have a complex reproductive cycle in which the mussel larvae attach for a short time to a host fish species. The life span, the time of spawning, the host fish species, and many other aspects of the life history of the Tar River spiny mussel are still unknown.

The Tar River spiny mussel may have always existed in low numbers. However, the apparent recent reduction in its distribution and the extremely small population size make it vulnerable to extinction from a single catastrophic event, such as a tank-truck accident involving toxic chemical spill. The North Carolina Department of Natural Resources and Community Development (1983) reports of the Tar River: "Agricultural erosion rates are low, but loadings of nutrients and pesticides are above average." A hydroelectric project proposed for an upstream reservoir, a navigation and flood control project under consideration by the U.S. Army Corps of Engineers, and a stream obstruction removal project being conducted by the U.S. Soil Conservation Service could also impact the species if

the mussel's welfare is not considered during planning and implementation of these projects.

On March 5, 1982, the Service published a notice in the **Federal Register** (47 FR 9483) that a status review was being conducted for the Tar River spiny mussel. The notice requested data on the species' status and solicited information on environmental and economic impacts, plus the effects on small businesses that could result if the species were listed and its critical habitat were designated. A total of 24 letters were received by the Service in response to the notice of review. Only two respondents totally opposed the listing of the species, while five respondents felt more information was needed before further decisions were made on listing. Three of the comments involved questions concerning potential economic impacts of designating critical habitat, but these letters provided no information that the Service could use in making economic projections. Four comments identified potential projects and ongoing activities that could impact the species; ten responses stated they were aware of no project that might impact the species.

On May 22, 1984, the Service announced in a general notice of review of invertebrate wildlife published in the **Federal Register** (49 FR 21664) that substantial information was available to support proposing the Tar River spiny mussel for protection under the Act. On September 17, 1984, the Service published in the **Federal Register** (49 FR 36418) a proposed rule to list the Tar River spiny mussel as an endangered species. That proposal provided information on the species' biology, status, threats, and the potential implications of listing. The proposal also solicited comments on the species' status and threats to its continued existence.

Summary of Comments and Recommendations

In the September 17, 1984, proposed rule (49 FR 36418) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted (the U.S. Soil Conservation Service, Edgecombe County Government, and Region L Council of Governments were also contacted in person) and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Daily Southerner*, Tarboro, Edgecombe County, North Carolina, on October 4, 1984; a news release on the proposal was issued; and interviews of Service personnel on the proposed action were conducted by a local newspaper and a radio station. A total of 14 written comments were received. The comments are discussed below:

The Corps of Engineers (CoE), Department of the Army, stated that it had recently received a request from Pitt County, North Carolina, to enhance navigation and flood control on the Tar River in Pitt and Edgecombe Counties, North Carolina. CoE has requested our assistance in evaluating the potential impacts of this project on the spiny mussel. CoE further stated, "Although the listing of this species will have the effect of making our planning in the Tar River basin more time-consuming and would likely restrict some activities, we support the listing of this species due to its documented rapid decline, its severely restricted range, and the severity of the threat posed by the introduced Asiatic clam (*Corbicula fluminea*)." The Service believes that a navigation and flood control project through the Tar River spiny mussel's habitat could have severe impacts on the species. The Service has been in contact with CoE to assist it in its evaluation of effects on the mussel. The Service concurs with the CoE assessment that listing will increase the time required for planning and that some activities may be restricted. However, the Service has conducted thousands of consultations on listed species and has found that alternative methods for meeting project objectives that are compatible with protecting species are usually developed.

The Soil Conservation Service (SCS), U.S. Department of Agriculture, alerted the Service to a proposed stream obstruction removal project in Edgecombe County, North Carolina, that may impact the Tar River spiny mussel. This project is designed to provide for small-boat access to tributaries of the Tar River and is not expected to result in substantial habitat alterations. However, the Service agrees that the project could potentially impact the Tar River and the mussel. The Service has met with SCS and local governmental representatives to discuss the project's design. Through these meetings, the Service has learned that a pilot project will be conducted on a Tar River tributary that enters the river below spiny mussel habitat. Evaluation of this project by SCS and the Service will allow for needed modifications of future work.

The Federal Energy Regulatory Commission (FERC) reported on a hydroelectric facility proposed for the Tar River upstream of the spiny mussel's habitat. It stated that a license application had been received but was found deficient and returned to the applicant. The Service has been in contact with FERC and the applicant concerning this project and both parties are aware of potential impacts on the spiny mussel.

The U.S. Geological Survey, U.S. Department of the Interior, commented that it anticipated no conflict with any of its projects or studies.

The U.S. Nuclear Regulatory Commission stated that it had no facilities currently licensed or under review that would impact the Tar River spiny mussel.

The North Carolina Department of Natural Resources and Community Development, North Carolina Wildlife Resources Commission, two conservation groups, and one individual stated that they supported the listing.

The North Carolina Department of Transportation responded: "We do not anticipate any major conflicts between the U.S. Fish and Wildlife Service proposal and the transportation programs being planned by our agency." The Service concurs with this assessment.

The North Carolina State Clearinghouse reported that the proposed rule was submitted to the North Carolina Inter-governmental Review Process and no comments had been received.

The Region L Council of Governments, Rocky Mount, North Carolina, which provides regional planning for five North Carolina counties, including Edgecombe County, commented that it had received no negative comment on the information that it distributed on the Tar River spiny mussel. Its comments further stated: "You may use this letter to show no negative comments were received and thus there was no expressed opposition to the project."

One comment was received from an individual who thought that the species might inhabit a pond adjacent to the Tar River in Pitt County. The Service contacted this individual, and gave him a physical description of the Tar River spiny mussel. The individual then concluded that the mussel in the pond was not the spiny mussel.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined

that the Tar River spiny mussel (*Elliptio (Canthyria) steinstansana* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 38900, October 1, 1984; codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Tar River spiny mussel (*Elliptio (Canthyria) steinstansana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of a recent Service-funded survey of the Tar, Neuse, and Roanoke rivers indicate that the Tar River spiny mussel (with an estimated total population size of 100 to 500 individuals) exists only in approximately 12 miles of the Tar River in Edgecombe County, North Carolina. This represents a significant reduction in known range, as historic records show the species was once also found both upstream (Nash County, North Carolina) and downstream (Pitt County, North Carolina) of its present range.

The species' restricted range makes it vulnerable to toxic chemical spills, which could result from traffic accidents involving trucks or any of the major highways that cross the Tar River. A single such event could cause total extinction of the species. The mussel is also threatened by other factors. A feasibility study is not being conducted of the possibility of hydroelectric power production at an upstream dam in Rocky Mount, North Carolina. Some alternatives being considered would restrict river flows on a daily basis to store water for peak power demands. Fluctuating river flows could impact the species by stranding individuals on sand bars and, if the river flows are reduced substantially, by affecting the species' water quality requirements.

Pitt County, North Carolina, has requested the CoE study the feasibility of enhancing navigation and flood control in the Tar River. River and stream modification to achieve these ends could cause direct impacts on the species and its habitat, unless full consideration is given the spiny mussel's requirements.

SCS is removing obstructions to provide for passage of small boats in some tributaries of the Tar River. This project could have an impact on the mussel fauna of the Tar River if erosion and siltation related to the project are not controlled prior to an after project completion.

In a report prepared by the North Carolina Department of Natural Resources and Community Development (1983), the Tar River was characterized as having low agricultural erosion rates, but loadings of nutrients and pesticides were above average. The North Carolina Wildlife Resources Commission, in response to the Service's notice or review, stated that pumping large volumes of water from the Tar River during drought periods could threaten the species by decreasing water quality.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* The specues has recently been described and its approximate range delineated (Johnson and Clarke, 1983). This notoriety for such a unique and rare mussel can be expected to increase colllection pressure from shell dealers and collectors. As the population is small, the removal of any individuals could seriously impact the species survival.

C. *Disease or predation.* There is no evidence of threats from desease or predation.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (subsection 113-272.4) prohibits collecting wildlife, which includes freshwater mussels, without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal projects. Federal listing will provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The Tar River has become infested by the Asiatic clam (*Corbicula fluminea*)—a species introduced from Asia. This non-native species may have an adverse effect on the Tar River spiny mussel's survival. The feeding activity of the Asiatic clam (which has densities estimated at 1,000 individuals per square meter (10.8 square feet) in some places) could reduce the availability of phytoplankton needed as a food source for the Tar River spiny mussel.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Tar River spiny mussel as endangered. The mussel's small population and present restricted range (12 river miles) make it extremely vulnerable to a single catastrophic event, and its range has greatly contracted within the immediate past. Threatened status would therefore not be appropriate. Critical habitat designation would not be prudent (see following Critical Habitat section). A decision to take no action would exclude the Tar River spiny mussel from needed protection available under the Endangered Species Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Tar River spiny mussel at this time. This rare mussel is very unusual, being one of only three known species of spined freshwater mussels. There is a small but significant demand by amateur and professional collectors for this species. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the Tar River spiny mussel and risk depletion of an already limited population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated.

Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the Tar River spiny mussel include, but are not limited to, the following: issuance of permits for hydroelectric facilities, stream alterations, enhancement of navigation, reservoir construction, wastewater facility development, flood control projects, and road and bridge construction on the Tar River. Three specific projects having Federal involvement have been identified that could impact the species: a hydroelectric project on the Tar River at Rocky Mount, North Carolina; a navigation and flood control project on the Tar River; and a stream obstruction removal project on Tar River tributaries. These projects and potential impacts on the species are discussed above. Modifications of these planned or ongoing activities may be necessary to protect the Tar River spiny mussel. It has been the experience of the Service that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives are met.

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

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Johnson, R.I., and A.H. Clarke. 1983. A new spiny mussel, *Elliptio (Canthyria) steinstansana* (Bivalvia: Unionidae), from the Tar River, North Carolina. Occasional Papers on Mollusks, 4(6):289–298.

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. 1983. Biological classification of streams and ponds in North Carolina—Documentation of impaired water use, July 1983, 335 pp.

Shelley, R.M. 1972. In defense of mollusks. Wildlife in North Carolina, 36:4–8, 26–27.

Author

The primary author of this final rule is Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species								
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Clams								
Mussel, Tar River spiny	*Elliptio (Canthyria) steinstansana*	U.S.A. (NC)	NA	E	187	NA	NA

Dated: June 10, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–15388 Filed 6–26–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 124
Thursday, June 27, 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 1050

Milk in the Central Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend the "reload point" definition of the Central Illinois order. The action would permit milk to be reloaded on the premises of a milk plant without the operations of both the "reload station" and the milk plant being combined and considered a single supply plant under the order. Prairie Farms Dairy, Inc., a cooperative association that represents about one-half of the producers who supply milk to the market, requested the action to facilitate the efficient assembly of milk from distant farms for movement to distributing plants.

DATE: Comment are due on or before July 12, 1985.

ADDRESS: Comment (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: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

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 efficient milk marketing.

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 Central Illinois marketing area is being considered as follows:

Section 1050.19 (Reload point) in its entirety.

All persons who want to send written data, views or arguments about the proposed action should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the **Federal Register**.

The comments that are sent 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 the "reload point" definition of the order.

Under the current definition of a reload point, if milk is reloaded on the premises of a milk plant the reloading operations are considered to be a part of the supply plant's total operations, i.e., the reloading operations are combined with the processing operations of the milk plant and considered a single business unit.

Suspension of this provision was requested by Prairie Farms Dairy, Inc., a cooperative that represents about one-half of the producers who supply the market. A cooperative that represents most of the other producers on the market, indicated that it would not oppose the proposal.

Prairie Farms contends that the present provision will not allow the cooperative to market efficiently the milk of 65 producers who are located in the vicinity of Preston, Iowa, and whose milk has been delivered to the cooperative's bottling plant in Peoria, Illinois, for many years. Because of the distance involved, the milk of such dairy farmers is pumped from the smaller farm tankers into larger over-the-road tankers at an assembly point near the production area for further shipment to such distributing plant. The only such facility that is available to provide such services for the cooperative is a plant equipped to manufacture cheese.

However, if the milk is reloaded on the premises of the cheese plant, the reloading operations would be considered to be a part of such plant's total operations for the purpose of applying the other provisions of the order. Without the suspension, proponent states that the cooperative would have to locate an appropriate site, and construct a new separate reload station of its own. Prairie Farms claims that its proposed action would eliminate the need for such costly adjustments and facilitate the efficient assembly of milk from distant farms for movement to distributing plants.

Proponent asked that the suspension be effective as soon as possible but not later than August 1, 1985, and that it be continued indefinitely. Suspension of the order provision for an indefinite period should not be considered. Absent a specific date for expiration of a suspension based on marketing conditions that are expected to be temporary, the more appropriate action would be to terminate the provision. If a suspension is appropriate it should be effective for a specified period of time.

In view of marketing conditions in this particular situation, interested parties should have an opportunity to comment on whether the "reload point" definition should be suspended, and if so, what period of time should be covered by the suspension. Commentors also are invited to express their views about whether such definition should be terminated, in light of the current marketing practices of handlers.

List of Subjects in 7 CFR Part 1050

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1050 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 24, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs

[FR Doc. 85-15443 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563 and 584

[No. 85-460]

Industry Conflict-of-Interest Regulations

Dated: June 10, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations governing conflicts of interest at institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation"). Some of these proposed amendments correct technical errors and clarify provisions contained in the 1983 amendments to these same regulations. The Board also is proposing to amend its definition of "affiliated person" to exclude publicly traded corporations where an officer, director or affiliated person of an insured institution is an officer (who does not own a controlling stock interest) in such corporation, and to clarify its longstanding staff interpretation regarding inclusion of vice presidents in the definition of affliated person. The proposed amendments also would clarify the definitions of "officer" and "securities," and revise the definition of "affiliate". In addition, the Board proposes to lift its ban on purchases of loans by an insured institution from an affiliated person, and to permit such purchases with the prior written approval of the Supervisory Agent. The proposed amendments would permit subsidiary insured institutions of holding companies to engage in certain affiliated transactions with their wholly owned service corporations without the prior written approval of the Supervisory Agent or the Board.

DATE: Comments by August 15, 1985.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Rosemary Stewart, Associate General Counsel, (202) 377–6437, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Board adopted comprehensive conflict-of-interest regulations in 1976, following nearly two years' consideration of industry problems and public comment after first publishing proposed rules in this area. Since that time, the Board has acted several times to update the provisions of its conflict-of-interest regulations and to relieve restrictions that no longer appeared necessary. The most recent amendments in 1983 permitted commercial loans up to $100,000 for affiliated persons and greatly expanded the amounts and availability of personal-purpose loans to affiliated persons, although it basically kept intact the other restrictions on loans and other transactions with affiliated persons. [Board Resolution No. 83–548, dated September 28, 1983, 48 FR 45382 (October 5, 1983)].

The Board again is desirous of updating and clarifying its regulations in the area of industry conflicts of interest. While the Board recognizes the industry's need to diversify and take measured risks, it continues to believe that lending, investments, and other business activities of thrifts should not be intertwined with the business of the insiders who control, direct, and operate insured institutions. Several Congressional hearings in the recent past have disclosed the high percentage of failures of financial institutions that have been accompanied by serious insider abuses. In fact, it has not gone unnoticed on Capitol Hill that the banking regulatory agencies do not have conflict-of-interest regulations as comprehensive as those of the Board. Accordingly, the Board will continue to keep its conflict-of-interest rules in place, but again is proposing certain liberalizations, which it believes are unlikely to result in significant insider abuses, but which will permit certain transactions that may prove beneficial to insured institutions. In several other respects, the Board is proposing technical corrections and minor amendments that will clarify the agency's staff interpretations of various provisions of the conflict-of-interest regulations. These are described and discussed below.

Changes in Definitions

The Board proposes to revise the definition of "affiliated person" to exclude publicly traded corporations in which a director, officer, or controlling person of the insured institution is an officer (any officer) in such a corporation so long as that individual does not own a controlling interest in the corporation. Corporations in which officers, directors, or controlling persons of the institution hold 10 percent or more of the stock, singly, or 25 percent as a group with other directors, officers, or controlling persons, would continue to be included in the definition of affiliated persons. This would be a liberalization of the existing regulation, which would permit numerous companies to avoid classification as an "affiliated person" of insured institutions and thereby become eligible for loans from those insured institutions.

Originally, the conflict-of-interest regulations included in the definition of affiliated person all corporations in which an officer, director or controlling person of the insured institution was an officer. In the October 1983 amendments, the Board revised the definition of affiliated person so that the positions at a corporation that would trigger affiliated-person status included only the chief executive officer or chief financial officer. 48 FR 45382. Upon further reflection and consideration of industry comments that the existing definition precludes the extension of profitable commercial credit to corporations where an institution insider has no real opportunity to abuse such credit, the Board has determined to propose this further amendment to the definition. Whereas the chief executive officer and chief financial officer of closely held corporations often exercise a controlling influence over their companies, this is much less likely to occur in publicly traded companies. Accordingly, the Board proposes to amend the definition of affiliated person to exclude publicly traded companies (that is, corporations the stock of which is registered under the Securities Exchange Act of 1934 and is actively traded) where a director, officer, or controlling person of an insured institution is an officer of such companies.

The Board also proposes to revise its definition of officer to clarify its longstanding interpretation that vice presidents who are not involved at all in policy-making, such as branch managers who have the title of assistant vice president or second vice president, are not considered "affiliated persons" under the conflict-of-interest regulations. The Board also is taking this opportunity to propose a technical amendment to its definition of "securities" in § 561.41, which was added to the Insurance Regulations in 1982, and which excludes insured accounts from its stated definition. While this is an appropriate definition for the agency's concerns relative to account insurance and the securities laws, the Board overlooked the effect that the definition would have on its regulations at Part 569 (12 CFR 569.1 *et seq.*) which govern the solicitation of proxies in insured mutual institutions. Indeed, a technical reading of the new definition would make it unnecessary to send proxy material to the members of a mutual institution whose very membership results from their having savings deposits at the institution. These are precisely the members (along with borrowers) that the mutual proxy rules were designed to protect, so that the inadvertence of the prior omission in this definition is

obvious. Accordingly, the Board is proposing to add a brief parenthetical phrase to the definition of security in § 561.41 to clarify that the term includes insured accounts only for the purpose of the proxy-solicitation regulations at Part 569 of the Insurance Regulations.

The Purchase of Loans From Affiliated Persons

Under existing § 563.43(c)(2), an insured institution is prohibited from purchasing loans from other financial institutions and companies that are affiliated persons of the institution. Under this same provision an institution may not buy loan participations from an affiliated person or jointly originate loans with an affiliated person. This has prevented purchases of loans and loan participations between financial institutions that are owned by the same individual or holding company.

This particular provision of the conflict-of-interest regulations was considered by the Board in a final decision and order issued in 1982 at the conclusion of a litigated cease-and-desist proceeding. In the Board's decision, which adopted the recommended decision of the administrative law judge who presided at the hearing, the regulation was explained:

> Section 563.43(c) prohibits institutions from entering into several kinds of transactions with third parties from which an "affiliated person" of the institution would derive a benefit. At the time of promulgation, the Bank Board stated its interest was to prevent institutions from being placed in "in a position of having to choose between acting in the best interests of itself or the affiliated person." 41 FR 35819 (1976). Section 563.43(c) eliminates the choice and is intended to prevent the conflict by providing that such loans are not to be made.

In line with this reasoning, it has been the position of the Board in the past that to allow institutions to purchase mortgage loans or participations from their own affiliated persons presents the same type of "choice" between acting in the best interests of the institution or the affiliated person. Avoided by the existing regulation is any pressure exerted by an affiliated person to sell loans or participations at rates or under terms that are less favorable to the institution than it may receive elsewhere, or which are different from what it may have agreed to upon fair and impartial consideration. Alternatively, an affiliated person may pressure for such a sale at a time when the insured savings and loan association would have preferred to invest its funds elsewhere. At the present time, paragraph (c)(2) prevents these difficult choices from having to be made.

At another point in the Board's decision in the cease-and-desist case mentioned above, the Board stated:

> The possible hardship to any loan applicant from enforcement of § 563.43(c)(2) must be weighed against the need to restrict transactions that constitute conflicts of interest. In some cases, the regulation may create a hardship for institutions that are not seeking to improperly benefit their affiliated persons. However, the Bank Board must deal with all insure savings and loan associations in its regulations equally and must do so by striving to find the balance between necessary prohibitions to avoid abuses and any resulting hardships on these who neither intend nor practice such abuses.

While the Board continues to believe that the potential for abuse may exist with such inter-company loan sales, it nonetheless believes that greater economy between affiliated institutions may result from permitting such sales if it can be demonstrated that such sales are beneficial to the insured institution(s) involved. The existing rule is particularly troublesome in that it prevents loan sales between affiliates of the same holding company even though sales between an insured institution and its own holding company are permitted—with prior approval—under the Board's Holding Company Regulations. Moreover, an insured institution may obtain prior approval to purchase any kind of real or personal property from an affiliated person, but has no opportunity under existing regulations to seek approval to buy loans from the same affiliated person. Accordingly, the Board proposes to lift the ban on purchases of loans and loan participations from affiliated person-companies, and to make such transactions subject to the prior-approval provisions of § 563.41. The Board is particularly desirous of receiving public comment on the aspect of its proposal, especially with respect to whether such a relaxation is likely to result in real or potential losses that outweigh the benefits of permitting such sales to occur.

As proposed, new § 563.41 would require prior approval from the Supervisory Agent approval for the purchase of all kinds of loans from affiliated persons as well as the sale of all kinds of loans to affiliated persons. The standard for such approval would require that the Supervisory Agent determine that the transaction is fair to and in the best interests of the institution or subsidiary. As proposed, the Supervisory Agent could request additional information from the applicant in order to make this determination and could condition approval on such terms as he/she believes necessary to meet the required standard for approval.

The Board has considered whether to permit a blanket approval of a series of transactions proposed between an institution and an affiliated person. Generally, § 563.41 anticipates approval of individual transactions, but there is no reason that an institution could not seek a continuing approval for permission to buy assets such as office supplies from an affiliated person if the institution can justify the price to be paid over a specified period of time. The proposed newly permitted purchases of loans would highlight this distinction. If an institution proposed to purchase a multi-million dollar loan participation from an affiliated person, it would be expected to make application for that purchase with a full description of the proposed transaction and proof of the appraised value of the security property. If, however, an institution proposed to purchase home loans made by an affiliated person company over a period of time, it could seek blanket approval to do so if it could satisfy the Supervisory Agent that the terms of all such purchases will be fair to the institution, and that it will receive necessary documentation such as supporting appraisal reports at the time of such later purchases.

In such cases, the Supervisory Agent would be empowered and expected to limit the overall volume of loans to be purchased in a specified period of time as deemed reasonable by the Supervisory Agent based on the size and financial condition of the applicant. For example, an institution that has demonstrated that it will purchase loans from an affiliated company on fair and reasonable terms, might be told that it may purchase up to one million dollars of loans from that company over a one-year period of time, after which it would be required to reapply for the next year. At the time of reapplication, the Supervisory Agent likely would request evidence regarding the performance of loans purchased over the last year from the affiliated company. Another example of a condition that could be imposed in connection with the proposed authority to purchase loans, where the Supervisory Agent is not convinced of the reasonableness of the transaction, would be a requirement that loans be purchased with recourse in the event of default (unless the seller is another FSLIC-insured institution). Alternatively, a proposed sale of loans by an insured institution might be conditioned on the sale being without

recourse. If adopted as proposed, the Board would intend this authority to be carefully granted and strictly protected, particularly after having prohibited such loan purchases for many years, until the overall effects of permitting such intercompany transactions to take place could be appropriately analyzed.

Transactions Between Subsidiary Institutions of Holding Companies and Their Service Corporations

Section 584.3 of the Holding Company Regulations generally restricts subsidiary insured institutions of savings and loan holding companies from engaging in certain transactions with their holding companies and other affiliates. Pursuant to paragraphs (a)(7) and (b), the Board may approve certain affiliated transactions if they are found not to be detrimental to the savings account holders of the insured institution or to the insurance risk of the Corporation. These specified transactions are (i) the purchase, sale or lease of property or assets to or from an affiliate, (ii) an agreement or understanding with any affiliate to render services to the institution, and (iii) the payment under any such service agreement or understanding, in all cases in which the aggregate amount paid, given or received on each type of transaction during the preceding 12 months exceeds the lesser of $100,000 or 0.1 percent of the institution's total assets at the end of the preceding fiscal year.

The definition of "affiliate" under the Holding Company Regulations includes service corporations. Therefore, if a subsidiary insured institution wants to engage in any of the transactions described above with a service corporation, it must obtain prior written approval under § 584.3(a)(7). While the Board continues to believe that transactions between insured institutions and their service corporations must be safe and sound, it nonetheless believes that, in general, prior approval of these specific transactions with wholly owned service corporations may be unnecessary and burdensome. The existing rule is particularly troublesome in that service corporations are generally excepted from the Board's regulations governing conflicts of interest in Part 563 and, under another proposal being adopted today, would be accepted from regulations governing loans to one borrower.

The Board thinks that it will be able to adequately monitor and regulate these affiliate transactions with service corporations under its existing authority over insured institutions and that approving these transactions without application would not pose a detriment to the savings account holders of subsidiary insured institutions or to the insurance risk of the Corporation. Accordingly, the Board proposes to add a new paragraph (h) to § 583.4 which would permit subsidiary insured institutions to engage in the specified transactions with their wholly owned service corporations, if the transaction is otherwise authorized by law, has been determined by the institution's board of directors not to be detrimental to account holders or to the insurance risk of the Corporation and is not a means to facilitate a transaction with any affiliate other than a wholly owned service corporation. The Board is particularly desirous of receiving comments on this proposed amendment, particularly with respect to whether it would apply to all service corporations and whether this amendment is likely to result in real potential losses that outweigh the benefits of approving these transactions without application.

Other Proposed Changes

In addition to adding the purchase and sale of loans to the types of transactions for which § 563.41 permits prior approval by the Supervisory Agent, the Board proposes to clarify that section in the following respects. The existing reference to interests in "real or personal property" would be expanded to set out the following listed categories: Real property, securities, loans (or participations therein) made by an affiliated person or in which an affiliated person holds a security interest, or personal property in an amount that exceeds $500 in one annual audit period. The definition of "securities" at § 561.41 is intended to apply in the proposed new § 563.41, and the reference to $5000 for personal property will exclude the need to apply for approval to purchase small quantities of goods such as office supplies from an affiliated person. While the Board has considered adding definitions of real and personal property to this section, it is not inclined to do so, but rather to defer to state law about whether particular items are construed as real property in the involved states. The Board notes, however, that equity interests in real estate clearly are included in the reach of § 563.41. In connection with inquiries to date about the meaning of "personal property" pursuant to this section, the Board's staff has taken an expansive view of the term, specifically with respect to including proposed sales of securities and interests in limited partnerships and syndications that may not be "real property." This view is endorsed by the Board.

Several institutions have noted that existing § 563.41 requires submission of an independent appraisal report as a part of the application process, which, while suited for proposed purchases or sales of real estate, is not necessarily appropriate for review of transactions involving other types of property. Accordingly, the Board is proposing to add to the required submissions for approval under this section, the alternative of other reliable written indications of fair market value prepared by a qualified person who is not an affiliated person or employee of the applicant institution or of a controlling person of the institution.

The revisions proposed for § 563.43 are largely technical in nature. The language providing that loans to affiliated persons should not "present other unfavorable features" now appearing at paragraphs (b)(1) and (b)(5) of § 563.43 is proposed to be eliminated because it is believed to be unenforceably vague and becasuse other specific requirements for such loans are deemed adequate to prevent abuses in the area. Incorrect citations appearing in the 1983 amendments to paragraphs (b)(4) and (b)(5) of § 563.43 that refer to paragraphs (b)(3) are corrected to refer to (b)(2) of the same section. The reference to "employees" that appears three times in paragraph (b)(4) of § 563.43 is eliminated because the conflict-of-interest regulations apply only to affiliated persons and not to employees of an insured institution that do not otherwise meet the definition of "affliated person" appearing at § 561.29.

There have been several inquiries to the staff about whether the reduction in interest rates permitted for personal-purpose loans made to affiliated persons are the only permissible perquisites that may be granted by insured institutions. This was the intention of the Board's 1983 amendments, but the language of the existing regulation does not make this clear. Accordingly, the proposed amendment to § 563.43(b)(3) would clarify that the permitted reduction in interest rates, as compared to the interest rates on credit extended to members of the general public, is the only permitted variation in loan terms available to affiliated persons. This is deemed appropriate because other benefits, such as waiving or reducing fees, are difficult for the Board and insured institutions to monitor and to compare to terms offered the general public.

Another proposal that would formalize prior staff interpretations of

§ 563.43(b)(6) would clarify that while purchases of the stock or other securities of an affiliated person are prohibited, an institution may purchase 100 percent of the stock of a corporation that was an affiliated person prior to consummating the stock purchase if the transaction receives the prior written approval of the Board's Supervisory Agent pursuant to § 563.41. This provision recognizes that certain potential conflicts of interest and usurpations of corporate opportunity can be avoided by the sales of affiliated companies to insured institutions or their subsidiaries. One area where such sales have been encouraged by the Board is that of insurance agencies and insurance companies that previously were owned by insiders but which are made properly operated by insured institutions or their subsidiaries.

In addition, the Board is proposing to amend § 563.34 to clarify that it is only an insured institution's placing of deposits in a financial institution which is an affiliated person that causes that section to apply, and not the placing of deposits in an insured institution by its own affiliated persons such as officers and directors. Indeed, the Board is desirous of encouraging such deposits by officers and directors and their affiliated companies in insured institutions and this regulation was not intended to provide otherwise, although it has come to the Board's attention that the existing language of the regulation is confusing in this respect.

Finally, the proposed amendments would revise the definition of "affiliate" contained in § 561.25 by providing that an organization is an affiliate of an insured institution if the insured institution directly or indirectly or acting in concert with one or more persons or individuals owns or controls more than 25 percent of the number of voting shares or the number of shares voted at the last election of directors, trustees, or persons exercising similar functions. This revision would place the regulatory definition of "affiliate" of an insured institution in closer conformity with that prescribed by statute in connection with the regulation of savings and loan holding companies. *See* 12 U..C. 1730a (a)(1)(I) and (a)(2) (1982). The proposed definition would also provide explicitly that it does not apply when other definitions are provided by statute or by regulation, such as 12 U..C. 1730(m)(1) (1982) and § 563b.2(a)(1).

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexiblity Act (5 U.S.C. Ch. 6), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective, and legal basis underlying the rule.* These elements have been incorporated elsewhere into the supplemental information regarding the rule.

2. *Small entities to which the rule will apply.* The rule would apply to all FSLIC-insured institutions, regardless of size.

3. *Impact of the rule on small institutions.* The rule would not have a disproportionate effect on small institutions, nor is it expected that the rule will have a significant economic impact on a substantial number of small entities. Deregulatory aspects of the proposed amendments will ease the compliance burden of small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with the proposal.

5. *Alternative to the rules.* Various supervisory tools may be used to prevent insider self-dealing at insured institutions: case-by-case supervision, prior approval of the Board or Supervisory Agent, or regulatory restrictions and prohibitions. The Board believes the rule as proposed utilizes the combination of these tools that will impose the least burden on small insititutions while achieving the desired regulatory objectives.

List of Subjects

12 CFR Part 561

Savings and loan associations.

12 CFR Part 563

Banks deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR Part 584

Holding companies, Savings and Loan associations.

Accordingly, the Board proposes to amend Parts 561 and 563 of Subchapter D and Part 584 of Subchapter F, Chapter V, of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority for Parts 561, 563 and 584 would continue to read as follows:

Authority: Secs. 402, 407, 408 of the National Housing Act, 48 Stat. 1256, 1260 and 73 Stat. 691, as amended, (12 U.S.C. 1725, 1730, 1730a); Reorg. Plan No. 3 of 1947; 12 CFR Parts 1943–48 Comp. p. 1071.

2. Revise paragraph (a) of § 561.25 to read as follows:

§ 561.25 Affiliate.

* * * * *

(a) Of which an insured institution, directly or indirectly or acting in concert with one or more other individuals or companies, owns or controls more than 25 percent of the voting shares or more than 25 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

* * * * *

3. Revise paragraph (d) of § 561.29 to read as follows:

§ 561.29 Affiliated person.

* * * * *

(d) Any corporation, partnership or other organization (other than the insured institution or a corporation or organization through which the insured institution operates) that meets the following tests:

(1) If a corporation is a publicly traded company (a company the stock of which is registered under the Securities Exchange Act of 1934 and is actively traded as defined in § 563.18–2 (c)(5) of this subchapter), it shall be deemed an affiliated person of an insured institution if a director, officer, or controlling person of such institution, directly or indirectly, either alone or with his/her spouse and members of his/her immediate family who also are affiliated persons of the institution, owns or controls 10 percent or more of any class of equity securities in the corporation; or, if said director, officer, or controlling person owns or controls, with other directors, officers and controlling persons of such institution and their spouses and immediate family members who also are affiliated persons of the institution, 25 percent or more of any class of equity securities of the corporation.

(2) Any corporation, which is not a publicly traded company, or any partnership or other organization shall be deemed an affiliated person of an insured institution if:

(i) The securities ownership tests of paragraph (d)(1) of this section are satisfied, or

(ii) A director, officer or controlling person of the insured institution:

(*a*) Is chief executive officer or chief financial officer (or a person performing similar functions) in the corporation, partnership or organization;

(*b*) Is a general partner; or

(*c*) Is a limited partner who directly or indirectly, either alone or with his/her

spouse and the members of his/her immediate family who also are affiliated persons of the institution, owns an interest of 10 percent or more in the partnership (based on the value of his contribution) or who, directly or indirectly, with other directors, officers and controlling persons of such institution and their spouses and immediate family members who also are affiliated persons of the institution, owns interest of 25 percent or more in the partnership.

(3) For the purposes of this paragraph (d) the phrase "a corporation or organization through which the insured institution operates" shall mean a service corporation, as defined in § 561.26 of this Part, in which such insured institution owns 25 percent or more of its voting shares.

* * * * *

4. Revise the first sentence of § 561.32 to read as follows:

§ 561.32 Officer.

The term "officer" means the president, a vice president (other than one who does not have policy-making authority such as, for example, an assistant vice president or second vice president), the secretary, the treasurer, the controller, and any other persons performing substantially similar duties with respect to any organization whether incorporated or unincorporated.

* * *

5. Amend § 561.41 by adding before the period at the end of the last sentence of that section the following parenthetical phrase: "(except as the term "security" is used in Part 569 hereof relating to proxies)".

PART 563—OPERATIONS

6. Revise the first sentence of § 563.34 introductory text as follows:

§ 563.34 Deposit relationships involving affiliated persons.

No insured institution or subsidiary thereof shall place or maintain deposits in an affiliated person of such institution or in any financial institution or holding company affiliate thereof of which an affiliated person of such insured institution is a director, if the maintenance of such deposits has been specifically disapproved by the Principal Supervisory Agent. * * *

* * * * *

7. Amend § 563.41 by revising the title and paragraph (b), paragraph (c) introductory text, by revising and redesignating paragraph (c)(i) and (ii) as paragraphs (c)(1) and (2) and by redesignating paragraph (c)(iii) as paragraph (c)(3), as follows:

§ 563.41 Restrictions on business transactions with affiliated persons.

* * * * *

(b) *Restrictions.* Unless the transaction is determined by the Prinicipal Supervisory Agent or his designee to be fair to and in the best interests of the insured institution or its subsidiary, no insured institution or subsidiary thereof may, directly or indirectly, purchase or lease from, jointly own with or sell or lease to, an affiliated person of the institution any interest in the following: real property, securities, loans (or participations therein) made by an affiliated person or in which an affiliated person holds a security interest, or personal property in an amount that will exceed $5000 in an annual audit period.

(c) *Conditions.* Applications made pursuant to this section shall—

(1) Describe fully the proposed transaction and justify the price to be paid or received by the institution or subsidiary. The Supervisory Agent may request additional information if he/she is unable to make the determination required herein that the transaction is fair to and in the best interests of the institution or subsidiary. Moreover, the Supervisory Agent may condition approval on such terms as he/she believes necessary to endure that the transaction is fair to and in the best interests of the institution or subsidiary.

(2) Be supported by an independent appraisal report prepared in accordance with the regulations and policy of the Corporation for all interests in real property or for loans secured by real property; for all other types of proposed transactions, be supported by an independent appraisal report where practicable or by other reliable written indication(s) of value where an appraisal report is not practicable. In any such case, the appraisal report or other indication of value shall be prepared by a qualified person who is not an affiliated person or employee of insured institution or subsidiary or of a controlling person of the institution.

* * * * *

8. Amend § 563.43 by revising paragraphs (b)(1) and (b)(3); amending paragraph (b)(4) by removing the phrase "or employees", all three times it appears; changing the reference to "paragraph (b)(3)" to read "paragraph (b)(2)", and changing the reference in the last sentence of paragraph (b)(4) to "a single affiliated person" to read "a single salaried officer"; amending paragraph (b)(5) by changing the reference to "paragraph (b)(3)" to read "paragraph (b)(2)", and removing the phrase "or present other unfavorable features"; revising paragraph (b)(6); and amending paragraph (c) by removing subparagraph (2) thereof, and redesignating paragraphs (c)(3), (4) and (5) as paragraphs (c)(2), (3) and (4), respectively; as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

* * * * *

(b) *Restrictions concerning loans and other transactions with affiliated persons.* (1) No insured institution or subsidiary thereof may either directly or indirectly, make a loan to any affiliated person of such institution or purchase such a loan, except for loans in the ordinary course of business of such institution or subsidiary, which do not involve more than the normal risk of collectibility and which do not exceed the loan amount that would be available to members of the general public of similar credit status applying for the same type of loan, and which are of the following types:

* * * * *

(3) An insured institution or subsidiary may make loans described in paragraph (b)(1) of this section at an interest rate not below its current cost of funds based on all savings accounts and borrowings (except that in the case of a loan secured by a savings account, the interest rate shall be at least one percent above the rate of the return on such savings account). The board of directors of the insured institution or subsidiary shall determine whether or not to extend credit to an affiliated person at an interest rate below that given the general public in accordance with this section. Such a reduction in interest rates for affiliated persons, if granted, shall be the only permitted variation in loan terms as compared to credit extended by the insured institution or subsidiary to members of the general public. If a reduction in interest rates is granted, the resolution required by paragraph (b)(2) of this section must set forth:

(i) The institution's current cost of funds, including the elements of its calculation; and

(ii) A justification of the more favorable rate if the loan is to an affiliated person other than a salaried officer of the institution or any subsidiary thereof.

* * * * *

(6) No insured institution or subsidiary thereof may invest, either directly or indirectly, in the stock, bonds, notes, or other securities of any affiliated person of such institution, with the following exception: An insured institution or subsidiary may purchase

100% of the stock of a corporation that was an affiliated person prior to consummation of such a purchase if the transaction receives the prior approval of the Principal Supervisory Agent pursuant to § 563.41 of this part.

* * * * *

SUBCHAPTER F—SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

9. Amend § 584.3 by changing the reference in paragraph (e) to "paragraphs (a) (4) and (6)" to read "paragraphs (a) (4) and (7)"; and by adding new paragraph (h); as follows:

§ 584.3 Transactions with affiliates.

* * * * *

(h) *Approval for transactions with service corporations.* The Corporation hereby approves without application, for the purposes of this section only, each transaction, agreement or understanding, or payment under any agreement or understanding referred to in paragraph (a)(7) of this section, if—

(1) The transaction, agreement or understanding is between a subsidiary insured institution and its wholly owned service corporation;

(2) The transaction, agreement, understanding or payment is otherwise authorized by law;

(3) The terms of the transaction, agreement, understanding or payment have been determined by the board of directors of the subsidiary insured institution not to be detrimental to the savings account holders of the insured institution or to the insurance risk of the Corporation; and

(4) The transaction, agreement, understanding or payment is not a means of facilitating a transaction, agreement, understanding or payment involving any affiliate of the insured institution other than a wholly owned service corporation.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-15335 Filed 6-26-85; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Request for Public Comments on the Shipbuilding/Ship Repair Size Standard

AGENCY: Small Business Administration.

ACTION: Notice of inquiry.

SUMMARY: In recent months SBA has received 11 public comments proposing a lower size standard in the ship repair component of the shipbuilding/ship repair industry (SIC-3731). Presently, this size standard is 1,000 employees. These commentors generally favored a size standard of 500 employees for ship repair while retaining a 1,000-employee size standard for shipbuilding. SBA has conducted a preliminary investigation which indicates that the size standard in this industry should not be revised. It wishes to solicit public opinion as to the advisability of this course. For this purpose, copies of the study on which this notice is based will be available to interested parties upon request.

DATE: Written comments must be submitted on or before August 26, 1985.

ADDRESS ALL COMMENTS TO: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1414 L Street NW., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653-6373.

SUPPLEMENTARY INFORMATION: In analyzing this industry, the Size Standards Staff treated the industry as essentially two different industries—shipbuilding and ship repair. It asked the question whether either activity, when analyzed as an industry, would merit a different size standard than 1,000 employees. It took two broad factors into consideration—the industrial structure of these two "industries" and the procurement atmosphere surrounding them.

The industrial structure considerations for both industries focused on five factors. These include concentration ratio (percent of total sales received by the four largest firms in the industry), the average firm size in receipts, coverage (the proportion of firms falling under the size standard), the average size of Government contracts, and the proportion of Federal contract dollars won by small firms.

The following review attempts to summarize findings relating to these five industrial structure parameters which were considered.

Factor	Finding	Implication
Concentration Ratio	Receipts tend to be concentrated in a few large firms in both shipbuilding and ship repair activities.	This factor suggests that the size standard for both industries should be in the 1,000–1,500 employee range.
Average Firm Size	Average firm size in both activities is higher than average firm size in most comparable industries.	Very high average firm size implies that a high standard in the 1,000–1,500 employee range would be warranted in both industries.
Coverage	The 1,000 employee size standard covers an estimated 80% of shipbuilding firms and 89% of ship repair firms.	A comparison with comperable industries indicates that both the shipbuilding and ship repair size standards should be retained at 1,000 employees based on this factor.
Size of Contract	Shipbuilding has an average contract size of over $2.0M while the ship repair average contract size is less than $200,000.	This factor implies that a retention of the shipbuilding size standard of 1,000 employees would be warranted, but it raises the question as to whether the ship repair size standard at 1,000 employees is too high. This factor alone tends to support a size standard in the 500 employee range for ship repair.
Proportion Won by Small Firms	The proportion won by small shipbuilding firms was only 4% in 1983 while in ship repair it was 29%. This contrasts with 19% for all industries and 40% for general contractors.	The very low share won by shipbuilding firms suggests that a higher size standard of 1,500 employees might be warranted. The 29% share for ship repair fell between the share for all industries and that for general contracting, neither supporting a higher nor a lower size standard in ship repair than the present 1,000 employee figure.

The preliminary information cited above strongly suggests that the shipbuilding component's size standard should either be retained at 1,000 emloyees or raised to 1,500 employees. Industrial structure factors support a size standard in this range. Only one factor—size of contract—suggested a lower size standard in shipbuilding, and this single consideration is clearly outweighed by considerations such as concentration ratio, average firm size, and percent of contract dollars set aside, all suggesting a higher size standard.

Preliminary information on the ship repair component's size standard is slightly less conclusive than that of shipbuilding. While four of the five factors affecting industrial structure supported a size standard of 1,000 employees, one factor—size of contract—justified in isolation a size standard of 500 employees. The net effect of all these considerations led SBA to initially consider a size standard in the 750–1,000-employee range.

Other factors more directly related to the Government procurement market, however, argued strongly against a lower size standard for either shipbuilding or ship repair. First, data for the 1979–1982 period did not support contentions that a few firms were dominating the set-aside market in the

overall industry. Indeed, there are natural constraints working against a continual domination and the SBA has always been reluctant to deliberately exclude targeted firms from its programs via the size standard mechanism. Second, the Navy's recent upgrading in contracting requirements argues against a lowering of the size standard in this industry at this point in time. Third, the SBA believes that a lowering of the size standard in this industry could result in growth disincentives and a permanent dominance by the larger firms in the industry.

As a general rule, SBA hesitates to break a 4-digit industry into component parts for size standard purposes. Evidence to date, moreover, does not support a radically different situation in the two activities. Indeed, most firms are active in both activities and both are subject to many of the same procuring influences relating to Navy contracting. If SBA were to split the size standard based on activity, information to date suggests that shipbuilding would be raised to 1,500 employees, while ship repair would be retained at 1,000 employees rather than dropping either activity to a lower size standard. However, there seems to be little reason to move in this direction, since no shipbuilding firm appears in this size range and public interest to date has focused entirely on lowering the present 1,000-employee size standard. Thus, SBA's tentative position at this time, based on preliminary data, is to retain the 1,000-employee size standard in both activities.

Since most factors argue against a revision in the size standard for both shipbuilding and ship repair activities, SBA is inclined to retain the 1,000-employee size standard in both activities at that level. SBA is, however, very much aware that the ship repair activity's size standard has become very controversial in recent months. To date, a majority of commentors have supported a lower ship repair size standard. However, these commenters may not reflect the entire industry. SBA wishes at this point in time to solicit opinions from all firms in the industry as to the practicality of retaining the present size standard. In particular, we are concerned as to whether small firms in the industry would be helped or hurt by a lower size standard than 1,000 employees in the shiprepair component of the industry.

Dated: June 12, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-15094 Filed 6-26-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85-AWA-33]

Proposed Establishment of Restricted Area R-4009; Maryland

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-4009 in the State of Maryland to enhance security and safety at the Naval Support Facility, Thurmont, MD.

DATES: Comments must be received on or before August 9, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Airspace Docket No. 85-AWA-33, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.40 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to implement airspace action to supplement the special use airspace associated with Prohibited Area P-40, which is currently in effect at the Naval Support Facility in Thurmont, MD. The additional airspace would have the same lateral dimensions as P-40, i.e., a radius of 3 nautical miles, and vertical limits of 5,000 feet above mean sea level (MSL) (the ceiling of P-40) up to 12,500 feet MSL. This proposal is intended to provide adequate safeguards for aeronautical activity at the Naval Support Facility and to separate nonparticipating traffic from that activity, as well as to supplement the security purposes of P-40. Exclusion of nonparticipating aircraft is not required in this supplemental special use airspace to the extent required in the airspace to 5,000 feet MSL included within P-40. Accordingly, the FAA proposes to establish a restricted area in the airspace above P-40 to an altitude of 12,500 feet MSL, rather than to expand P-40. The establishment of R-4009

would support national security needs associated with P-40 while providing air traffic control and airspace users an adequate degree of access to airspace when segregation of nonparticipating aircraft is not required for security or safety purposes. Operations through or within the proposed restricted area would not be prohibited at all times but would be subject to prior ATC authorization. Authorization could be requested from Washington Air Route Traffic Control Center (Washington Center), which would be both the using agency and controlling agency for the restricted area. When traffic could not be permitted in the area for safety or security reasons, ATC would clear IFR traffic for alternate routes of flight. Section 73.40 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "Major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034) February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation Safety Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; (14 CFR 11.69.

2. § 73.40 is amended as follows:

R-4009 Thurmont, MD (New)

Boundaries. That airspace within a 3 NM radius of the Naval Support Facility (lat. 39°38'53"N., long. 77°28'01"W.).

Designated altitudes. 5,000 feet MSL to 12,500 feet MSL.

Time of designation. Continuous: Transit may be authorized by Washington ARTCC when conditions permit.

Controlling agency. FAA, Washington ARTCC.

Using agency. FAA, Washington ARTCC.

Issued in Washington, D.C., on June 21, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-15373 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22127; File No. S7-737]

National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of public comments.

SUMMARY: The Commission solicits comments on issues relating to the designation of securities as National Market System Securities. In connection with the recent expansion of the criteria for designation as a National Market System Security, the Commission believes that it would be useful to obtain comments on a broader range of issues regarding National Market System designation.

DATES: Comments to be received by September 30, 1985.

ADDRESSES: All comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comments should refer to File No. S7-737, and will be available for inspection at the Commission's Public Reference Room 450 Fifth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Rule 11Aa2-1 ("NMS Securities Rule" or "Rule") [1] under the Securities Exchange Act of 1934 ("Act") [2] establishes procedures by which certain securities traded in the over-the-counter ("OTC") market are designated as qualified for trading in a national market system ("OTC/NMS Securities"). On December 18, 1984, the Commission adopted amendments to the Rule that increased the number of OTC securities eligible for designation as NMS Securities from approximately 1350 to approximately 2500.[3] The Commission believes it is appropriate to solicit comment on the direction which the designation process for National Market System ("NMS") Securities should take and the manner in which these securities should participate in the NMS. Accordingly, the Commission requests comment on the manner in which current OTC/NMS Securities should be integrated into additional NMS facilities and initiatives, and whether the Rule should be amended to focus on other groups of securities or to achieve different purposes.

II. Background

In the 1975 Amendments, Congress directed the Commission "to facilitate the establishment of a national market system for securities." [4] In giving the Commission this broad mandate, Congress neither defined the term "national market system" nor specified the minimum components of such a system. Instead, Congress vested in the Commission "broad discretionary powers to oversee the development of a national market system" and "maximum flexibility" in working out its specific details in a manner consistent with the findings and goals of the 1975 Amendments.[5]

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[1] 17 CFR 240.11Aa2-1. *See* Securities Exchange Act No. 17549 (February 17, 1981), 46 FR 13992 ("Adoption Release").

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 ("Amendments Release"). At that time 1104 OTC securities had actually been designated as NMS Securities.

[4] Section 11A(a)(2) of the Act.

[5] Senate Comm. on Banking, Housing, and Urban Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7-9 [Comm. Print 1975], *reprint in* [1975] U.S. Code Cong. & Ad News 179, 185-87 ("Senate Report"). *See also* Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354 ("January Statement"); Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 ("Status Report").

The 1975 Amendments establish that "[t]he securities markets are an important national asset which must be preserved and strengthened" through the application of "new data processing techniques." Section 11A(a)(1) of the Act. Congress found that these techniques should be used to foster intermarket linkages, enhance investor protection, and maintain fair and orderly markets. Congress

Continued

As part of the general mandate to facilitate the establishment of an NMS, Congress specifically directed the Commission, by rule, to "designate the securities or classes of securities qualified for trading in the national market system." [6] The 1975 Amendments, however, were silent as to the particular standards the Commission should employ in designating NMS Securities. Similarly, the legislative history did not mandate the use of any particular standard in the designation process. Instead, Congress provided the Commission with the flexibility and discretion to base NMS designation standards upon the Commission's experience in facilitating the development of a national market system. Given the Congressional desire that the system develop primarily through the interplay of market forces, such flexibility appears essential.[7]

On February 17, 1981, the Commission adopted the NMS Securities Rule. The Rule provides criteria and procedures by which certain securities traded exclusively OTC are designated as NMS Securities.

The primary effect of designating OTC stocks as NMS Securities at the present time is that transactions in such securities must be reported in a real-time system in accordance with the Commission's last sale reporting rule,[8] and quotations for such securities must be firm as to the quoted price and size in accordance with the Commission's firm quotation rule.[9] In adopting the Rule, the Commission determined, among other things, that real-time transaction reporting and firm quotations would increase market efficiency and enhance opportunities for public investors to obtain execution of their orders in the best possible market.[10]

The Rule employe a two-tiered approach for designation.[11] Tier 1, which became effective April 1, 1982, requires that the most actively traded OTC securities be designated as NMS Securities.[12] Tier 2, which became effective on February 1, 1983, permits certain additional OTC securities to become NMS designated at the election of the issuer.[13]

Based on the early trading experience of OTC/NMS Securities, the Commission and most industry participants concluded that last sale reporting and firm quotations have improved the markets for OTC/NMS Securities and benefited investors without imposing undue burdens on market makers.[14] In February 1984, the NASD petitioned the Commission to expand the Tier 2 designation criteria to allow more issuers of OTC securities to elect NMS status.[15] On December 18, 1984, the Commission amended the Tier 2 designation criteria to incorporate the standards used by the NASD in determining its National List (*i.e.*, the list of NASDAQ securities that the NASD supplies to the national news media), thereby increasing the number of OTC securities eligible for NMS designation from 1350 to approximately 2500.[16]

III. Discussion and Request for Comment

In adopting the Rule, the Commission stated that designating "OTC securities as NMS Securities and thereby including these Securities for the first time in a real-time transaction reporting system, is only one in a series of steps . . . toward the development of an NMS."[17] In the nearly three years since the first OTC securities were designated as NMS Securities, the Commission believes that last sale reporting has become an established part of the OTC market. Accordingly, the Commission finds that the designation of OTC/NMS Securities has progressed sufficiently that it is now appropriate to consider the relative costs and benefits of taking additional steps in the development of an NMS.[18]

The Commission today solicits comment on several issues regarding NMS Securities. These issues include whether and how OTC/NMS Securities should be integrated into other NMS facilities and initiatives,[19] and in particular the extent to which these securities should be made subject to trade-through and short sale rules.[20] A further issue is whether the Rule should be amended to include exchange-traded securities or be revised to eliminate any unnecessary competitive burden on competing exchange markets.

A. Inclusion of OTC/NMS Securities in Additional Facilities and Initiatives

1. Linkages

The Commission has requested comment on whether exchanges should be granted unlisted trading privileges ("UTP") in OTC/NMS Securities.[21] If the Commission determines to grant such requests,[22] an important issue that must be addressed is the integration of OTC and exchange trading in these securities. In this regard, a fundamental finding of the 1975 Amendments was that "[t]he linking of all markets for [NMS] securities through communications and data processing facilities" would benefit investors and the securities markets.[23]

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stated as goals of an NMS the availability of quotation and transaction information, the efficient execution of transactions, fair competition between the markets, the execution of customer orders in the best possible market, and, where consistent with other goals, the execution of orders without the participation of a dealer. Section 11A(a)(2) of the Act.

[6] Section 11A(a)(2) of the Act.

[7] Amendments Release, *supra* note 3, at 737.

[8] 17 CFR 240.11Aa3-1.

[9] 17 CFR 204.11Ac1-1.

[10] *See* Adoption Release, *supra* note 1, at 13996.

[11] OTC securities for which quotation information is disseminated in the National Association of Securities Dealers, Inc.'s ("NASD") electronic interdealer quotation system ("NASDAQ") are eligible for designation. The Rule provides for the removal of the NMS designation "[i]f such security becomes listed and registered, or admitted to unlisted trading privileges, on an exchange." 17 CFR 240.11Aa2-1(a), (b). In this regard, the Commission recently published for public comment a rule proposal that would allow certain NMS Securities also to be listed on a regional securities exchange. *See* Securities Exchange Act Release No. 21703 (February 1, 1985), 50 FR 7065.

In adopting the NMS Securities Rule, the Commission concluded that imposing NMS qualification criteria upon listed securities was unnecessary at that time because most listed securities already were included in NMS last sale and quotation disclosure facilities, and selection of less than all reported securities as NMS Securities could create unwarranted distinctions among these securities. Nonetheless, the Commission specifically left open whether exchange traded securities should be designated as NMS Securities in the future. *See* Adoption Release, *supra* note 1, at 13995.

[12] 17 CFR 240.11Aa2-1(b) (4)(i).

[13] 17 CFR 240.11Aa2-1(b) (4)(ii)

[14] *See* Amendments Release, *supra* note 3, at 735.

[15] For a discussion of the NASD's petition, see Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314. For a discussion of the views of OTC market makers and issuers, see Amendments Release, *supra* note 3, at 733.

[16] Amendments Release, *supra* note 3. As of June 4, 1985, there were 1,997 OTC/NMS Securities.

[17] Adoption Release, *supra* note 1, at 14000.

[18] The Commission believes that the concerns expressed by certain commentators in 1979 regarding the "premature incorporation" of NMS Securities into additional NMS facilities and initiatives may not be applicable today. For those concerns, see Status Report, *supra* note 5, at 20367.

[19] The Commission's directive to facilitate the development of a national market system includes specific recognition that there could be subsystems of an NMS. Section 11A(a)(2) of the Act. The Commission requests commentators to address the possible inclusion of some NMS Securities in one or more other subsystems of an NMS.

[20] In addition to these NMS initiatives, the Commission has issued releases requesting comment on granting exchanges unlisted trading privileges in OTC securities [Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156] ("UTP Release"), and proposing amendments to its confirmation rule, Rule 10b-10 under the Act, requiring broker-dealers executing trades in reported securities as principal with customers to disclose the trade price and mark-up in the trade [Securities Exchange Act Release No. 21708 (February 4, 1985), 50 FR 5786.

[21] The Commission emphasizes that the question whether exchanges should be granted UTP in OTC securities is under consideration and no determination has been made.

[22] UTP Release, *supra* note 20, at 46160.

[23] Section 11A(a)(1)(D) of the Act.

Accordingly, the Commission solicits comment on whether OTC/NMS Securities should be integrated into existing or other possible linkages, and the manner in which this could be accomplished. In this regard, the Commission notes that the NASD has developed a Computer Assisted Execution System ("CAES") to link OTC market makers and to provide, among other things, an automated order routing and execution system. CAES also is linked to the Intermarket Trading System ("ITS").[24] The Commission requests comment on whether OTC/NMS Securities should be included in CAES [25] and the ITS/CAES linkages.[26] In this connection, commentators should address whether inclusion should be accompanied with any changes in the present operation of these linkages.[27] The Commission requests commentators to consider whether any other linkage facilities would be appropriate for OTC/NMS Securities.

2. Price Protection

As early as 1973, the Commission indicated that the facilities of an NMS should provide a broker-dealer with the ability to insure that "his customer's order is executed in the best market available." [28] Similarly, the 1975 Amendments declared that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the practicability of brokers executing investor's orders in the best market. . . ." [29] In accord with these principles, the Commission has stated that " 'trade-throughs' are inconsistent with the goals of a national market system." [30] In response to these concerns, the ITS Plan participants submitted, and the Commission approved, amendments to the ITS Plan that provide "trade-through" protection for displayed bids and offers for securities traded through ITS.[31]

In adopting the NMS Securities Rule, the Commission stated that it "may be appropriate to reexamine a broker-dealer's responsibilities with respect to the execution of a customer's order in an NMS Security" once OTC securities are designated as NMS Securities.[32] Noting that OTC/NMS Securities would be traded "in an environment characterized by real-time transaction reporting and firm quotations," the Commission further stated "that it may be appropriate to expect that . . . a broker-dealer either will route his customer's order to the best displayed bid or offer (in size) or will provide his customer with a price equal to the best displayed bid or offer (in size)."[33]

Because last sale reporting and firm quotations are now present for OTC/NMS Securities, the Commission solicits comments on whether price protection should be provided for displayed bids or offers for these securities.[34] Specifically, the Commission requests comment on whether an OTC "trade-through" rule should apply to OTC/NMS Securities, and whether some or all OTC/NMS Securities should be subject to these requirements.[35] The Commission also requests comment on how an OTC "trade-through" rule should be structured. The Commission urges commentators to focus on the degree to which the present regulation of "trade-throughs" for ITS (including ITS/CAES) securities can, or should, be applied to the OTC markets.[36]

In discussing this questions, commentators should address the practical effect of such a rule on the OTC market. The Commission recognizes that virtually all OTC market makers currently display quotes with a size of 100 shares (the minimum that can be displayed in NASDAQ),[37] even though they generally are willing to effect larger trades at their quoted price.[38] The Commission requests comment on how a trade-through rule would affect the display of quote-size by OTC market makers and by exchanges receiving UTP in OTC/NMS Securities.[39]

3. Short Sales

The Commission's short sale rule, Rule 10a-1 under the Act,[40] generally does not apply to the OTC market.[41]

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[24] The ITS is an intermarket linkage and order routing facility operated jointly pursuant to an NMS Plan by certain national securities exchanges and the NASD. The current ITS Plan participants are the New York ("NYSE"), American ("Amex"), Boston ("BSE"), Cincinnati ("CSE"), Midwest ("MSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges, and the NASD.

At present, the ITS/CAES interface links exchange and OTC markets in Rule 19c-3 securities. *See* Securities Exchange Act Release Nos. 17744 (April 21, 1981), 46 FR 23858; 18713 (May 9, 1982), 47 FR 20413; and 19372 (December 23, 1982), 47 FR 58287.

Rule 19c-3 under the Act eliminates exchange off-board trading restrictions for reported securities which were listed after April 26, 1979, or were listed on April 26, 1979 but ceased to be traded on an exchange for any period of time thereafter. Securities Exchange Act Release Nos. 16888 (June 11, 1980), 45 FR 41125; 17744 (April 21, 1981), 46 FR 23856; and 20074 (August 12, 1983), 48 FR 36250.

[25] NMS Securities can now be traded in CAES at the election of one market maker; however, there is no requirement that all market makers in securities traded in CAES be participants in CAES. The Commission understands that trading activity in CAES continues to be very light. The Commission requests comments regarding whether all market makers trading in a CAES linked stock should be required to participate in CAES.

[26] If OTC/NMS Securities were traded on an exchange pursuant to UTP, they would become Rule 19c-3 securities and thus eligible for inclusion in the ITS/CAES interface.

[27] The Commission notes that orders entered into the ITS/CAES interface by exchange specialists are executed automatically, but that orders entered into ITS by CAES market makers are not. CAES market makers have complained that this disparity puts them at a competitive disadvantage in making markets in Rule 19c-3 securities. The exchange in return, have argued that this disparity was introduced by the NASD in designing CAES.

[28] SEC, *Policy Statement on the Structure of a Central Market System*, at 17 (March 29, 1973) ("Policy Statement"), *reprinted in* [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D-1, D-4.

[29] *See* Section 11A(a)(1)(C)(iv) of the Act.

[30] Securities Exchange Act Release No. 17314 (November 20, 1980), 45 FR 79018, 79020 n.22. The term 'trade-through generally refers to the execution of an order in one market center at a price inferior to that being displayed in another market center. *Id.* at 79019 n.12.

[31] Securities Exchange Act Release No. 17703 (April 9, 1981); Securities Exchange Act Release No. 19249 (November 17, 1982), 47 FR 53552.

[32] Adoption Release, *supra* note 1, at 14003.

[33] *Id.*

[34] The Commission also notes that, under the NASD's rules, a broker has an obligation to use reasonable diligence to both "ascertain the best interdealer market" for a security and execute his customer's order "so that the resultant price to the customer is as favorable as possible under prevailing market conditions." NASD, Interpretation of the Board of Governors—Review of Corporate Financing, Rules of Fair Practice, Art. III, section 1, NASD Manual (CCH) ¶ 2151.03(A), at 2035. The Commission requests comment on whether this NASD rule interpretation provides displayed OTC/NMS quotations with sufficient price protection.

[35] If OTC/UTP is not requested by an exchange or granted by the Commission, these requirements would apply only to the OTC market. If such UTP were to be requested and granted, these requirements would apply to all markets.

[36] The current ITS "trade-through" rule includes an exception for quotes of 100 shares, reflecting the use of automatic quotation-generation devices by regional exchanges to generate 100 share quotes in certain stocks. Because automatic quotation generating devices are not used in the OTC market, this exception need not necessarily be carried over to the OTC market if a trade-through rule were applied to that market.

[37] The Commission continues to believe that the display of quotes with size would be of benefit to the OTC market, and encourages OTC market makers to reflect accurately the size at which they are willing to trade in their quotations.

[38] In particular, market maker participants in the NASD's Small Order Execution System ("SOES") stand willing to accept trades of 500 Shares or less in SOES stocks at the best NASDAQ quote. Therefore, these market makers could be considered to be quoting 500 share markets at the best NASDAQ price in these stocks. In addition, some market makers are willing to accept orders of up to 1000 shares at the best NASDAQ bid or offer in other OTC automatic execution systems.

[39] In this regard, it is noted that, unlike OTC market-makers, exchanges typically compete both on the basis of price and by displaying quote size in stocks in which they make an active market.

[40] 17 CFR 240.10a-1.

[41] Rule 10a-1 currently applies to securities as to which last sale information is disseminated in the consolidated transaction reporting system. It relies on a tick test which is not easily workable without current last sale reporting. Securities Exchange Act

Continued

However, with the implementation in 1975 of a consolidated reporting system [42] for transactions in listed securities both on the exchanges and in the "third market," [43] the Commission extended Rule 10a–1 to OTC transactions in reported securities.[44]

In adopting the NMS Securities Rule, and thereby extending last sale reporting to OTC/NMS securities, the Commission specifically sought comment on whether short sale limitations should be extended to OTC/NMS Securities.[45] Now that over 1900 OTC securities have been designated as NMS Securities, with prospects that additional securities will soon be designated, the Commission again solicits comment on whether and how short sales in OTC securities designated as NMS Securities should be regulated. In particular, The Commission asks that commentators discuss whether Rule 10a–1 should be amended to cover all, or a portion of, OTC/NMS Securities.[46]

In assessing the feasibility of existing short-sale regulations to OTC/NMS Securities, it would be beneficial if commentators discuss the operation of Rule 10a–1 in the listed market.[47] Accordingly, the Commission solicits comment on the costs and benefits of Rule 10a–1 to the listed markets, *e.g.*, to what extent has the Rule been successful in preventing manipulative short sales and to what extent has the Rule inhibited legitimate short-selling activities? Additonally, the Commission requests comment on the harms, if any, attributable to the absence of short sale rules for OTC/NMS Securities. In this connection, the Commission requests commentators to discuss whether the absence of short sale rules for OTC/NMS securities has contributed to manipulative or fraudulant activity.[48] Alternatively, has the absence of such rules benefited investors, issuers, or the markets in these stocks?

B. NMS Securities

Commentators in the rulemaking proceeding that adopted the NASD's proposals raised certain fundamental concerns about NMS Securities. These commentators questioned whether the Rule continued to be necessary to bring last sale reporting to the OTC market, and whether the Rule should be redirected to encompass listed securities that have been included in other NMS facilities.[49] Accordingly, the Commission believes that it is appropriate to consider whether the Rule should be refocused.

At present, the only practical effect of designation as an NMS Security is to require last sale trade reporting in that security. When the NMS Securities Rule was adopted in 1981, this narrow focus was considered appropriate because the Rule was seen initially as a mechanism for gradually introducing last sale reporting to the OTC market. The Commission intended the mandatory Tier 1 standards to automatically include those OTC securities which clearly belonged in NMS disclosure facilities. The lower Tier 2 designation criteria, which rely on issuer choice, were intended to insure that, in the early stages of last sale reporting in the OTC market, only those other securities whose markets would benefit from NMS designation would be designated.[50] As a practical matter, including exchange-listed securities within the scope of the NMS Securities Rule would have had no effect at that time because most exchange-listed securities already were included in NMS last sale and quotation disclosure facilities.[51]

The Commission believes that last sale reporting has become an established part of the OTC market. There are over 1900 OTC/NMS Securities today. In addition, the NASD and many OTC issuers and market makers strongly endorsed the recent amendments to the Rule that increased the number of qualified securities from approximately 1350 to around 2500.[52] On the other hand, opponents of the NASD's petition to expand the number of securities eligible for NMS

Release No. 11458 (June 12, 1975), 40 FR 25442, 25443 ("1975 Rule 10a–1 Adoption Release"). The 'tick' test compares the price of a proposed short sale to immediately preceding transactions to determine its permissibility. Under this rule, short sales may be effected only on a plus tick (*i.e.*, at a price above the price at which the immediately preceding last sale was effected) or a zero-plus tick (*i.e.*, at a price equal to the last sale if the last preceding transaction at a different price was at a lower price), established by reference to the last sale either in the consolidated transaction report system or in a particular marketplace. Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80834, 80834 n.2.

[42] The Consolidated Tape Association ("CTA") collects and disseminates transaction reports for listed securities from all markets. The CTA members are the NYSE, Amex, BSE, CSE, MSE, PSE, Phlx, and NASD. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17798; and 11235 (February 18, 1975), 40 FR 9397.

[43] The third market is a term used to describe OTC transactions in listed securities.

[44] 1975 Rule 10a–1 Adoption Release, *supra* note 41. The Commission stated that its "original short sale rules did not apply to [OTC] transactions since, in the absence of publicity concerning [OTC] short sales [such as that afforded by the CTA], there appeared to be little reason to fear that such sales would have a manipulative or destabilizing impact on the market." *Id.* at 25443.

[45] Adoption Release, *supra* note 1, at 14001–02. In response to that solicitation, the NASD stated that "short selling regulations prior to and during a distribution of NMS securities would be appropriate but that it is not necessary, at this time, to impose across-the-board short sale regulations on transactions in NMS Securities." *Letter from* S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC (July 31, 1981) ["1981 NASD Short Sale Comment"], at 1. The NASD asserted that short sale limitations comparable to those imposed on the market for listed securities were unnecessary for the market for OTC/NMS securities because NMS issues will have volume and market maker requirements which will ensure an active competitive market." *Id.* at 1–2.

The Commission notes that under the amended NMS Securities Rule, a minimum trading volume standard is retained only in the Tier 1 designation criteria. *See* Amendments Release, *supra* note 3, at 737. The Commission also notes that the revised maintenance criteria for NMS Securities, which it has approved on a temporary basis, do not contain a trading volume requirement. *See* Securities Exchange Act Release No. 21670 (January 17, 1985), 50 FR 3610. Accordingly, the Commission solicits comment on the question whether the elimination of trading volume requirements from the Tier 2 designation criteria and the NMS maintenance criteria affects the need to extend Rule 10a–1 to OTC/NMS Securities.

[46] If the short sale rule were to be extended to cover all, or a portion of, OTC/NMS securities, should it operate in the same manner as Rule 10a–1 currently operates with respect to listed securities (*i.e.*, relying on the tick test)? The Commission also solicits comments on the question of whether there are unique issues associated with OTC/NMS Securities generally that would make another approach preferable.

In considering this question, commentators may wish to consider the two alternative versions of proposed Rule 10b–21 under the Exchange Act, which would restrict short sales of securities, including OTC securities, prior to and during underwritten offerings of securities of the same class as outstanding securities. The first version of proposed Rule 10b–21 would deter manipulative short selling prior to underwritten offerings by limiting the ability of short sellers to make covering purchases from certain persons within certain periods during an underwriting. Securities Exchange Act Release No. 11328 (April 12, 1975), 40 FR 16090. The second version, which focused on short selling itself rather than on covering purchases, would regulate short sales from the preoffering period until the end of post-offering stabilization arrangements through the use a "tick test." Securities Exchange Act Release No. 13092 (December 21, 1976), FR 56542. Neither version of proposed Rule 10b–21 has been adopted.

[47] In 1976, the Commission instituted a public rulemaking proceeding to determine whether Rule 10a–1's regulation of short sales of securities registered, or admitted to unlisted trading privileges, on national securities exchanges was still necessary. *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530. Stating that commentators generally indicated that the operative provisions of Rule 10a–1 worked well and should not be modified, the Commission withdrew proposed rules which would have suspended in part the operation of the "tick test". *See* Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80834.

[48] *See, e.g., Serving Readers—or Sources?* OTC Review, January, 1985 at 16.

[49] *See* Amendments Release, *supra* note 3, at 734–35.

[50] Adoption Release, *supra* note 1, at 13998–99.

[51] Adoption Release, *supra* note 1, at 13994–95.

[52] Amendments Release, *supra* note 3, at 732.

designation argued that the NASD was using the fact of NMS designation as a marketing device in competing with exchanges for "listings."[53]

In view of the foregoing, the Commission requests public comment on the following questions:

(i) Is the NMS Securities Rule still necessary in its present form to maintain last sale reporting in the OTC market?

(ii) If the NMS Securities Rule is no longer essential for that purpose, should the entire group of OTC stocks that have last sale reporting continue to be designated OTC/NMS Securities?

(iii) Is last sale reporting sufficiently developed in the OTC market that issuer choice should be removed from the Tier 2 designation criteria? In other words, should some or all of the securities that satisfy the Tier 2 criteria now be designated automatically in the same manner as securities qualified for Tier 1?

(iv) If the NMS Securities Rule retains its current focus, is there a danger of misperception of the significance of NMS designation with respect to the investment quality of a stock? Would such possible misperceptions be ameliorated if NMS designation were not limited to OTC stocks?

(v) To the extent the Rule is deemed either to be no longer necessary to encourage OTC last sale reporting or to confer an unfair advantage on OTC stocks designated as NMS Securities, should the Rule be refocused to designate other types of securities as NMS Securities? These types could include:

(a) securities with last sale reporting. The main consequence of OTC/NMS security designation, last sale reporting, also is present for securities listed on national securities exchanges. In discussing whether all securities with last sale reporting should be designated as NMS Securities, commentators should consider the costs and benefits of NMS designation for these securities.

(b)"reported securities". Listed securities substantially meeting NYSE or Amex listing criteria are eligible to be reported through the consolidated transaction reporting system and as such are deemed "reported securities" under Rule 11Aa3–1 and other rules.

(c) multiply traded securities. This group of securities could include securities traded through the ITS or ITS/CAES linkages, and current OTC/NMS Securities if, for example, the Commission were to grant exchanges UTP in these securities and such securities were included in an intermarket linkage.

(d) securities subject to trade—through rules. At present ITS and ITS/CAES securities are subject to such a rule. In the future, other securities such as OTC/NMS Securities also could be provided with trade-through protection.

IV. Conclusion

By publishing this release soliciting public comment, the Commission seeks to elicit suggestions on possible directions in which the NMS Securities Rule should evolve. Comments should be addressed to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comments should be received by September 30, 1985.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 21, 1985.

[FR Doc. 85–15401 Filed 6–26–85; 8:45 am]

BILLING CODE 8010–01–M

[53] *Id.* at 734. In approving the proposed amendments to the Rule, the Commission stated that it "has never suggested that NMS designation warrants the quality of these securities," and that "there was no intent on the Commission's part to use this initiative as a vehicle to contrast the relative merits of OTC and listed securities". *Id.* at 737 n.89.

DEPARTMENT OF TREASURY

Customs Service

19 CFR Parts 162 and 171

Proposed Customs Regulations Amendments Relating to Fines, Penalties, and Forfeiture Procedures

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to aid in the expedition of the disposal of property seized and forfeited for violations of the Customs laws. This proposal results from provisions of the Comprehensive Crime Control Act of 1984 and the Trade and Tariff Act of 1984, which made changes to the Tariff Act of 1930 in the procedures governing administrative forfeiture proceedings and the disposition of seized property. The proposed amendments include revisions to both the administrative petitioning process and the summary forfeiture process.

DATE: Comments must be received on or before August 26, 1985.

ADDRESS: Comments (preferably in triplicate) may be addreseed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5746).

SUPPLEMENTARY INFORMATION:

Background

Sections 311–323 and 2304 of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) and section 213 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), made various changes to the Tariff Act of 1930 with regard to the forfeiture and disposition of property seized by Customs. These changes include the expanded use of administrative forfeiture proceedings to permit the Government to perfect title to seized property more quickly, without having to resort to lengthy judicial proceedings; the transfer of forfeited property to other federal agencies and state of local law enforcement agencies which participated in the seizure of the property; and more expedited procedures for the disposition of seized property. These proposed changes are intended to reduce Customs costs for seizure and storage of seized property and the processing of penalty and forfeiture cases resulting from the seizure of the property.

To aid in the expeditious processing of these cases, certain regulatory changes are proposed that would reduce the amount of time property is held in Customs custody, thus reducing the costs of seizure and storage. Specific proposed changes include: (1) Reducing petitioning time in seizure cases from 60 days to 30 days; (2) authorizing expedited destruction or other disposition of low-value property under seizure when the costs of storage of the property are disproportionate to its value; (3) changing requirements for publication of administrative forfieture notices so as to reduce seizure costs; (4) further restricting the granting of extensions of time to file petitions for relief; and (5) increasing the district director's authority to accept payment of the appraised value of seized property from $50,000 to $100,000, inclusive. A detailed discussion of the proposed changes follows.

Discussion of Proposed Changes

1. Existing § 162.32, Customs Regulations (19 CFR 162.32), provides procedures to be followed by Customs when a petition for relief is not filed by a person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to

forfeiture. Presently, a 60-day period from the mailing date of the violation notice is allowed before any action is taken by Customs. Section 162.32 also lists conditions under which a district director may grant extensions of time for filing petitions for relief. However, the wording of current § 162.32 may be confusing in that application of these conditions for extension appear to be limited to cases arising under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for undervaluation of merchandise.

The proposed amendment to § 162.32 would reduce the petitioning time from 60 days to 30 days. It also would make it clear that extensions are not limited to 19 U.S.C. 1592 cases. Paragraph (a) of § 162.32 would be divided into new paragraphs (a), (b), and (c). New paragraph (a) would require referral of any fine or penalty case to the U.S. attorney, or the Department of Justice, if the penalty was assessed under 19 U.S.C. 1592, if no petition is received in 30 days. In any case involving a forfeiture, where no petition is received in 30 days, either administrative forfeiture proceedings would be completed or the case would be referred to the U.S. attorney, or the Department of Justice if the case arises under 19 U.S.C. 1592. New paragraph (b) would state that nothing in the regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618). The provisions of 19 U.S.C. 1618 permit remission of forfeitures at any time before sale of the property subject to forfeiture. Forfeiture proceedings should not be held in abeyance simply because an administrative petition is under review. New paragraph (c) would provide for the referral of seized property not eligible for administrative forfeiture to the U.S. attorney, or the Department of Justice if the penalty was assessed under 19 U.S.C. 1592, within 30 days rather than 60 days.

The provisions of current § 162.32(a) relating to the time for filing petitions in cases in which the statute of limitations will become available as a defense in 180 days or less, have been revised as proposed § 171.12(d), Customs Regulations (19 CFR 171.12(d)). The provisions of current § 162.32(a) relating to the filing or requests for extension of time to submit a petition also have been revised. They are now the subject of proposed § 171.15.

2. Current § 162.44, Customs Regulations (19 CFR 162.44), provides for the release of seized property upon payment of its appraised value. This procedure is provided for by section 614, Tariff Act of 1930, as amended (19 U.S.C. 1614). All requests for payment of the appraised value of the property, if the appraised value exceeds $50,000, must be addressed to the Commissioner of Customs. If the appraised value is $50,000 or less, all requests for payment of the appraised value must be made to the district director.

The proposed amendment to § 162.44 would increase the district director's authority to accept payment of the appraised value of seized property from $50,000 to $100,000, inclusive. Acceptance of a money payment equal to the appraised value of seized property worth in excess of $100,000 would remain in the jurisdiction of the Commissioner.

3. Current § 162.45, Customs Regulations (19 CFR 162.45), provides procedures for Customs to follow for publication of notices of forfeiture of property which is the subject of administrative forfeiture proceedings. If the value of the forfeited property exceeds $250, paragraph (b)(1) requires publication of administrative forfeitures in a newspaper of general circulation in the Customs district in which the property was seized. It has been determined by Customs that in many cases these publication costs can be prohibitive when compared to the value of the property being advertised.

Proposed § 162.45(b)(1) would eliminate the language "of general circulation" to permit publication in less costly periodicals in the district. All known claimants would receive detailed notices explaining their rights, and they would be informed of the name of the newspaper in which publication of the notice of forfeiture will appear and the dates on which publication is intended. The value of property that must be forfeited by newspaper publication would also be raised from $250 to $2,500.

Current § 162.45(b)(2), Customs Regulations, permits local publication of forfeiture notices by posting of a notice in a conspicuous place accessible to the public at the customhouse nearest the place of seizure and in the customhouse at the headquarters port for the Customs district. This method of publication is used if the value of the seized property does not exceed $250. It is proposed to amend this section to apply local publication rules to notices involving property to be forfeited valued at $2,500 or less.

A proposed amendment to current § 162.45(c), Customs Regulations, would allow delay of the publication and forfeiture process for a period not exceeding 30 days, thus conforming it to the proposed reduction in petitioning time from 60 days to 30 days.

4. Section 162.46(d), Customs Regulations (19 CFR 162.46(d)), provides for destruction of property by Customs after summary forfeiture is complete if the net proceeds of the sale of the property would not be sufficient to pay for the costs of the sale. It is proposed to amend this section to add a provision for the immediate destruction or other disposition of the property if the expense of storing the property is disproportionate to its value and such value is less than $1,000.

This new provision would conform § 162.46, Customs Regulations, to new § 612(b), Tariff Act of 1930, as amended (19 U.S.C. 1612 (b)), promulgated by section 213 of the Trade and Tariff Act of 1984. Section 612(b) concerns the destruction or other disposition of forfeited property. The new provision is intended to save Customs the significant storage costs on property of limited value. Under this new provision, all petitioning rights will be honored, but satisfaction of property rights would be in the form of money rather than the return of the property.

5. Current § 171.12, Customs Regulations (19 CFR 171.12), provides that, with certain exceptions, petitions for relief must be filed within 60 days from the date of mailing of the notice of fine, penalty, or forfeiture. Proposed § 171.12 would reduce the filing time in all fine, penalty, or forfeiture cases to 30 days. Current § 171.12(d), Customs Regulations, would be redesignated as proposed § 171.12(c). New § 171.12 (d) would permit the district director, in cases arising under 19 U.S.C. 1592, to demand that a petition be filed in less than 30 days, but not less than 7 days, if the statute of limitations could be raised as a defense to the penalty in fewer than 180 days from the date of notice of the penalty.

6. New § 171.15 would be added to Part 171, Customs Regulations. It replaces current § 162.32 (a)(2), Customs Regulations. New § 171.15 would list the criteria upon which extensions of the proposed 30-day petitioning period could be granted. If the petitioning period is reduced to 30 days, the petitioner must have been absent from the United States at least 20 of the 30 days to qualify for an extension.

New § 171.15(a)(3) would define situations in which an extension can be granted when evidence is not immediately available to the petitioner so as to allow him to file an effective petition. Legitimate requests for

information from other Government agencies, possession of evidence by a party reluctant to relinquish it, or unavailability of evidence in the possession of a foreign source are all reasons upon which an extension can be granted. Another significant change would be proposed § 171.15(b), making retention of new counsel insufficient reason, in and of itself, to grant an extension of time.

7. Current § 171.33, Customs Regulations (19 CFR 171.33), provides that all supplemental petitions for relief must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested. Proposed § 171.33 would reduce the time of filing of supplemental petitions in all fine, penalty, or forfeiture cases to 30 days.

The proposed amendments to §§ 171.12, 171.15 and 171.33 would reduce case processing time, thus reducing storage and other costs relating to the seizure of the merchandise, that may be incurred after the 30-day period. The proposed amendments relating to publication of forfeiture notices would significantly reduce Customs costs of publication.

The proposed amendments concerning the time for filing petitions and extensions thereof would reduce the amount of time seized property is held, thus reducing case processing time and saving Customs manpower hours and other resources.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, R.S. 5294, as amended, § 9, 24 Stat. 81, as amended, §§ 603, 609, 610, 611, 614, 618, 624, 641, 46 Stat. 754, as amended, 755, as amended, 757, as amended, 759; 49 Stat. 519; § 612, 98 Stat. 2986, (19 U.S.C. 66, 1603, 1609, 1610, 1611, 1612, 1614, 1618, 1624, 1641, 1705; 46 U.S.C. 7, 320).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 162 and 171

Administrative practice and procedure, Penalties, Seizures and forfeitures.

Proposed Amendments

It is proposed to amend Part 162, Customs Regulations (19 CFR Part 162), as set forth below.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. It is proposed to revise § 162.32 to read as follows:

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties, and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief under Part 171 of this chapter, or fails to pay the fine or penalty within 30 days from the mailing date of the violation notice provided in § 162.31 (unless additional time is authorized for filing a petition, as specified below), the district director shall, after required collection action is complete, refer any fine or penalty case promptly to the U.S. attorney, or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In the case of property subject to forfeiture, the district director, where appropriate, shall complete administrative forfeiture proceedings or shall refer the matter promptly to the U.S. attorney, or the Department of Justice if the case arose under section 592, in accordance with the provisions of subsection (c) below, unless the Commissioner of Customs expressly authorizes other action.

(b) *Institution of forfeiture proceedings before completion of administrative procedures.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(c) *Seized property is not eligible for administrative forfeiture.* If the seized property is not eligible for administrative forfeiture, and neither a petition for relief in accordance with Part 171 of this chapter, nor an offer to pay the domestic value as provided for in § 162.44, is made within 30 days (unless additional time has been authorized under § 171.15), the district director shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made, or the Department of Justice if the penalty ws assessed under section 592.

2. It is proposed to revise paragraphs (a) and (b)(1)(i) of § 162.44 to read as follows:

§ 162.44 Release on payment of appraised value.

(a) *Value exceeding $100,000.* Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding $100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the district director for the district in which the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over $100,000*—(1) *Authority to accept offer.* The district director is authorized to accept a written offer pursuant to § 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed $100,000;

* * * * *

3. It is proposed to revise the heading and paragraphs (b)(1) and (c) of § 162.45 to read as follows:

§ 162.45 Summary forfeiture: Property other than Schedule I controlled substances. Notice of seizure and sale.

* * * * *

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person other than Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812) exceeds $2,500, the notice shall be published in a newspaper in the Customs district and the judicial district in which the property was seized for at least three successive weeks. All known parties-in-interest shall be notified of the newspaper and expected dates of publication of such notice.

* * * * *

(c) *Delay of publication.* Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the district director has reason to believe that a petition for administrative relief in accord with Part 171 of this chapter will be filed.

4. It is proposed to revise the heading and paragraph (d) of § 162.46 to read as follows:

§ 162.46 Summary forfeiture: Disposition of goods.

* * * * *

(d) *Destruction.* (1) If, after summary forfeiture of property is completed, it appears that the net proceeds of sale will not be sufficient to pay the costs of sale, the district director may order destruction of the property. Any vessel or vehicle summarily forfeited for violation of any law respecting the Customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.

(2) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may proceed forthwith.

* * * * *

It is proposed to amend Part 171, Customs Regulations (19 CFR Part 171), as set forth below.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. It is proposed to revise § 171.12 to read as follows:

§ 171.12 Filing of petition.

(a) *Where filed.* A petition for relief shall be filed with the district director for the district in which the property was seized or the fine or penalty imposed.

(b) *When filed.* Unless additional time has been authorized as provided in § 171.15 of this chapter, petitions for relief shall be filed within 30 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Number of copies.* The petition shall be filed in triplicate.

(d) *Exception for certain cases.* If a penalty is assessed under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period of time shorter than 30 days but not less than 7 days, for the filing of a petition for relief.

2. It is proposed to amend Part 171 by adding a new § 171.15 to read as follows:

§ 171.15 Extensions of time for filing petition.

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a district director may extend the time for filing a petition or supplemental petition, upon the request of a person who is liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

(1) The person is incapacitated and unable to prepare or to assist in the preparation of a petition.

(2) The person is absent from the United States for 20 days or more during the 30-day filing period.

(3) Evidence necessary to file an effective petition is not immediately available. Evidence is not immediately available if it:

(i) Is in the possession of a foreign source and must be procured from same.

(ii) Is in the possession of a party who has demonstrated a clear unwillingness to relinquish it.

(iii) Requires that a request of any Government agency be complied with, provided that any such request is not frivolous and is made in accordance with law.

(4) The case involves a need to examine voluminous records to learn the facts on which to base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations.

(5) There is an occurrence of some act of God which makes compliance with petitioning time limits impossible.

(b) *Retention of new counsel insufficient reason to grant extension.* As a general rule, the mere fact that counsel has just been retained, without another enumerated reason, will be insufficient reason to grant an extension of petitioning time.

3. It is proposed to revise paragraphs (a) and (c)(2) of § 171.33, to read as follows:

§ 171.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the petitioner is not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief is requested as the effective period of the decision.

* * * * *

(c) (1) * * *

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision with respect to the entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

William von Raab,

Commissioner of Customs.

Approved: May 23, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-15349 Filed 6-26-85; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300121; FRL-2793-8]

Aldrin and Dieldrin; Proposed Revocation of Tolerances

Correction

In FR Doc. 85-5705 beginning on page 10080 in the issue of Wednesday, March 13, 1985, make the following correction: On page 10081, in Table 1, in the last column of the entry for Garlic, "0.01" should read "0.1".

BILLING CODE 1505-01-M

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40 CFR Part 180

[PP 3E2939/P370] PR-FRL #2857-2]

Pesticide Tolerance for Chlorothalonil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodity cranberries. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4)

DATE: Comments, identified by the document control number [PP 3E2939/P370], must be received on or before July 12, 1985.

ADDRESSES:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office fo Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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. Informant not marked confidential may be disclosed publicly by EPA without prior notice. 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 holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMAITON: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2939 to EPA on behalf of Dr. Robert H. Kupelian, Naitonal Director, IR-4 Project and the Agricultural Experiment Stations of Massachusetts, New Jersey, Washington and Wisconsin.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide chlorothalonil (tetrachloroisophtalonitrile) and its metabolite 4 hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity cranberries at 2.0 parts per million (ppm). The petition was later amended to propose a tolerance of 5.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year dog feeding study with a no-observed-effect level (NOEL) of 60 ppm (1.50 milligram (mg)/kilogram (kg) of body weight (bw)); a 2-year rat feeding study with a NOEL of 60 ppm (3.0 mg/kg/bw) with no oncogenic effects observed at any dosage tested under the conditions of the study; a 3-generation rat reproduction study with a NOEL of 15,000 ppm (750 mg/kg/bw) for reproduction effects and 1,500 ppm (75.0 mg/kg/bw) for effects on lactation; a rabbit teratology study with a NOEL of 62.5 mg/kg/bw (highest dose tested); five mutagenicity studies as follows: cell transformation in newborn rats, negative; mammalian cell gene point mutation, negative; Ames test, negative; *in vitro* mammalian point mutation, negative; and DNA repair, negative (except it may interfere with DNA repair in TA-1538 cells); a National Cancer Institute (NCI) rat oncogenicity study (#NIC-CG-TR-41, 1978), which was positive for neoplasia in male and female Osborne-Mendel rats at 5,063 ppm and 10,126 ppm (759 and 1,589 mg/kg/bw, respectively) but was not oncogenic in B6C3F1 mice at the highest dose tested of 10,126 ppm (1,589 mg/kg/bw); and a 2-year mouse oncogenicity study in male and female CD-1 mice at 0, 750, 1,500, and 3,000 ppm (0, 107, 214, and 430 mg/kg/bw, respectively). This CD-1 mouse study was suggestive of effects in male mice for tubular adenomas and carcinomas of the kidney and squamous and glandular carcinomas of the gastric mucosa. However, there was no dose-dependent relationship in the occurrence of these lesions. The Agency has completed an oncogenic risk analysis of the data presented in the CD-1 mouse study. Using the Crump Multi-stage Method, the calculated $Q1^*$ (the oncogenic potency factor) was determined to be 2.4×10^{-3} for exposure expressed in mg/kg/bw/day. Based on this information the calculated risk for those tolerances currently published is 10^{-4}. A tolerance of 5 ppm in cranberries results a calculated risk of 10^{-7} to 10^{-8}. Deficiencies have been alleged in the report of the NCI rat studies, and therefore SDS Biotech Corp, is repeating the 2-year rat study. Their final report is scheduled to be submitted to the Agency in mid-1985.

Data considered in support of the 4-hydroxy metabolite include a 90-day dog feeding study with a NOEL of less than 50 ppm (1.25 mg/kg/bw); a rabbit teratogenicity study with a NOEL of greater than 5 mg/kg (the highest dose tested); for mutagenicity studies as follows: a host-mediated assay in the mouse, negative, *in vivo* cytogenic in the mouse, negative; dominant lethal in the mouse, negative; and a dominant lethal in the rat, negative at 8 mg/kg/bw/day for 5 days; and a 2-year oncogenic study in male and female CD-1 mice at 0, 375, 750, and 1,500 ppm (0, 53.6, 107, and 214 mg/kg/bw, respectively). This study was negative for oncogenic effects under the conditions of the study, but no NOEL was established.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 1.5 mg/kg, or 60 ppm) and using a 100-fold safety factor, is calculated to be 0.0150 mg/kg of bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.90 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.7166 mg/day; the current action for cranberries

will increase the TMRC by 0.00225 mg/day, 0.31 percent. Published tolerances utilize 79.62 percent of the ADI; the current action will utilize an additional 0.25 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography utilizing microcoulometric or electron capture detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of chlorothalonil.

Based on the above information considered by the Agency and the fact that there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry or eggs. The tolerance would protect the public health and it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for the Administrative Procedures Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days because of the necessity to expenditiously provide a means for control of fruit rots infesting cranberry bogs.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 3E2939/P370]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance 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).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.275 is amended by adding and alphabetically inserting the raw agricultural commodity cranberries to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cranberries	5.0
* * * * *	

[FR Doc. 85-15568 Filed 6-26-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, and 187

[CGD 85-021]

Standards for Small Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Reopening and extension of comment period.

SUMMARY: The Request for Comment; Notice of Meeting (50 FR 13837) published April 8, 1985, put forth some basic parameters from which the Coast Guard will be operating in developing a potential future regulatory project. Due to requests from the public, the comment period is being extended 120 days.

DATES: Comments must be received on or before October 7, 1985.

ADDRESSES: Comments should be submitted to: Commandant (G-CMC), (CGD 85-021), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington D.C. 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, 2100 Second Street SW., Washington D.C. 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kerlin, Office of Merchant Marine Safety, U.S. Coast Guard (G-MTH-4/13), (202) 426-2197.

SUPPLEMENTARY INFORMATION: The Request for Comment; Notice of Meeting published on April 8, 1985, provided that public comments should be received by June 7, 1985. Due to public interest and request, the 60 day comment period is being reopened and extended another 120 days, to October 7, 1985.

B.G. Burns,

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

[FR Doc. 85-15412 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 85-75; FCC 85-306]

Radio and Television Broadcasting; Regulatory Flexibility Review; List of Additional Rules To Be Reviewed During 1985-1986

AGENCY: Federal Communications Commission.

ACTION: List of additional rules to be reviewed during 1985-1986.

SUMMARY: This action (Further Notice) invites public comment on an additional List of Rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 610. The purpose of the review is to determine whether such rules should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

Upon receipt of comments from the public, said comments will be evaluated and action will be taken to rescind or amend the Commission's rules, as required.

DATE: Comments may be filed August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald McClure, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 76

Administrative practice and procedure, Reporting and recordkeeping requirements.

Further Notice

Federal Communications Commission's list of additional Rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act during 1985–1986.

Adopted: June 11, 1985.
Released: June 14, 1985.

By the Commission.

1. On July 29, 1981, the Federal Communications Commission released its Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, Plan for periodic review of all rules issued by the agency which have, or will have a significant economic impact upon a substantial number of small entities. *See* 46 FR 39183 (July 31, 1981). Attached to the Commission's plan was a table outlining a broad schedule for reviewing FCC regulations toward the ends specified by the RFA during the next five years. The Notice in Gen. Docket No. 81–706 implemented the first year of the five year plan. *See* 46 FR 56466 (Nov. 17, 1981). The RFA Plan has been revised to accomplish the review of the Commission's Rules over the three years (1982–1985) thereby decreasing the original terms of review by one year.[1]

2. In accordance with the revised RFA Plan, the staff has reviewed the subparts of the Commission's regulations targeted for review from March 1985 through February 1986. A Notice of rules to be reviewed during this period was published in 50 FR 13394 (April 4, 1985). The attached Appendix lists additional groups of rules which are to be examined pursuant to section 610(c) of the RFA during 1985–1986, the fourth and final year of the Commission's RFA review. The Public is invited to comment on these rules for regulatory flexibility purposes. Comments should address the following: (1) The nature of the economic impact the rule(s) has (have) on the commenting party; (2) the continued need for rule(s); (3) the complexity of the rule(s); (4) the Extent to which the rule(s) overlap(s), duplicate(s) or conflicts(s) with other Federal rules, and, to the extent feasible, with state and local governmental rules; (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule(s); and (6) any other matters that would facilitate an informed review of the regulations specified in the attached Appendix.

3. Commenting parties should submit one original and five copies of each filing to the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.[2] Comments should specify the docket number of the proceeding and the name of the reviewing Bureau of Office.

4. Interested parties should file comments within 60 days from the date the Further Notice is published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

REGULATORY REVIEW PLAN, OFFICE OF THE GENERAL COUNSEL

Part/Sub and Title description	Need	Legal Basis
73C—Noncommercial educational FM broadcast stations.	These rules prescribe licensing policies, technical and operational standards for all noncommercial educational FM broadcast stations.	47 U.S.C. Sec. 154, 301, 303, 307.
73H—Rules applicable to all broadcast stations	These rules prescribe licensing policies, technical and operational standards for all broadcast stations.	47 U.S.C. Sec. 154, 301, 303, 307.
76A—General	These rules provide general information regarding the cable television service.	47 U.S.C. Sec. 152, 153, 154, 303, 307, 308, 309.
76B—Registration statements	These rules govern the filing of registration statements.	47 U.S.C. Sec. 152, 153, 154, 303, 307, 308, 309.

[FR Doc. 85–15110 Filed 6–26–85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1206 and 1249

[Docket No. 39953]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to eliminate the Uniform System of Accounts (49 CFR Part 1206) and revise the periodic reporting requirements (49 CFR Part 1249) for Class I common and contract motor carriers of passengers. The Commission believes these provisions are no longer necessary for Commission oversight of the ratemaking process. The Commission is proposing a new condensed report, applicable only to Class I motor carriers of passengers, to replace the current comprehensive annual and quarterly report forms. These changes should significantly reduce the carriers' accounting and reporting costs and burden.

DATE: Written responses should be filed on or before October 8, 1985. The proposed revisions would be effective upon approval by the Office of Management and Budget.

ADDRESS: An original and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, 202–275–7448.

SUPPLEMENTARY INFORMATION: Under the Commission's present rules, Class I Common and Contract motor carriers of passengers (hereafter referred to as motor carriers) are required to maintain their books of accounts in accordance with the Uniform System of Accounts (USOA) in 49 CFR Part 1206 and to file annual and quarterly financial reports based on the USOA in accordance with 49 CFR Part 1249. Approximately 64 motor carriers are subject to these rules. Collectively, these carriers devote about 13,000 staff hours annually to comply with the rules.

The Commission proposes to eliminate the USOA and to revise the reporting requirements for motor carriers of passengers (Appendix A). The Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982 (Bus Act) sharply reduced the Commission's regulatory role and consequently, many of its data requirements. The Commission, therefore, believes that voluminous reports are no longer necessary for regulatory oversight. Although the Commission recognizes

[1] The Notice in Gen. Docket No. 82–612 implemented the second year of the revised RFA Plan. *See* 47 FR 58315 (Dec. 30, 1982). The Notice in Gen. Docket No. 84–361 implemented the third year of the revised RFA Plan. *See* 49 FR 17045 (April 23, 1984).

[2] The original of each filing will be placed in the public docket, and the Secretary will forward one copy to the appropriate Bureau of Office.

that a number of parties rely on these reports for private analyses and monitoring purposes, the Commission believes that, in the absence of a need for information for regulatory purposes, it should not require passenger carriers to expend resources to satisfy merely private informational needs. This view is consistent with the Commission's "Policy Statement on Financial and Statistical Reporting" issued on May 5, 1979, which stated, "Periodic reports, annual or quarterly, will be required only for information needed by the Commission regularly and frequently. Information needed occasionally will be collected only when the specific need arises."

Much of the data used in rate proceedings have been derived from the Commission prescribed periodic reports. Now, however, the Bus Act has substantially increased the latitude of individual carriers to make rate changes. The new legislation has reduced our need for many forms of data previously collected. The Commission now believes that it is incumbent on the rate bureaus and carriers to develop a data collection system capable of sustaining any ratemaking process utilized in the present free market environment. Therefore, the Commission can no longer justify requiring periodic reports based on the USOA for collective ratemaking purposes.

The Commission also recognizes that our ability to perform extensive studies and analyses on the financial condition of the motor carrier industry will not be reduced. The proposed elimination of these periodic reports will cause some modification of two widely used publications; Transport Statistics, Part II, second release and Large Class I Motor Carriers of Passengers—Selected Earnings Data. Further, the proposal may have some impact on filings in Ex Parte No. MC–82 (Sub-No. 1), *Proceedings in Motor Carrier Revenue Proceedings—Intercity Bus Industry.* Although the Commission would also have to limit the scope of financial information reported in its Annual Report to Congress, the information presented in the proposed condensed form should satisfy the Commission's present regulatory requirements and give us the basic information needed to provide the Senate and the House with meaningful financial data at Congressional hearings.

Instead of the present Motor Carrier Annual Report Form MP–1 and the Quarterly Results of Operations Form QPA, the Commission is proposing a new condensed quarterly and annual report form for only Class I common motor carriers (Appendix B). The same one-page format would be used or both quarterly and annual filings. The proposed form would require only select financial and operating data totals such as revenues, expenses, net income and certain operating statistics. Class II motor carriers, would continue to be exempt from filing the proposed condensed reports. The Class II designation would be used instead of the current "Other than Class I" term for classification purposes.

The Commission believes that the proposed report form may be the least burdensome alternative to comply with Commission legal requirements and to achieve program objective. We note that this proceeding is in no way intended to diminish the Commission's authority to require carriers to provide, upon request or subpoena, information which it may from time to time deem necessary to carry out its statutory mandate to regulate the industry and to keep the Congress informed. This means that motor carriers must retain carrier operating records which document carrier operations. Moreover, carriers desiring to avail themselves of Commission intervention with regard to changes in rates or services under 49 U.S.C. 10706, 10935, or 11501, may choose to continue to use the USOA to support their requests. Alternatively, they may elect to submit whatever data and analyses they deem appropriate, provided of course, that they can adequately demonstrate to the Commission the reliability of the data, the validity of the methodologies used, and make available the sources of such data and methodologies. The Commission recognizes that if and when these rules are adopted, changes will be required in the rules of evidence in Ex Parte No. MC–82 which governs the presentation of data for rate-making proposes.

We request your comments on whether the Commission should continue to administer a USOA and mandate periodic reporting requirements in its current form. Also, we request your comments on the propriety of the proposed consensed reporting form. Finally, we request comments on whether we should continue to require the filing of any quarterly and/or annual reports.

In view of the mandate in 49 U.S.C 10101(1)E and 10101(3)A, to cooperate with the States and their officials on transportation and regulatory matters, we specifically solicit the comments of the States on the impact which this proceeding might have on their activities and any alternative suggestions which they might have regarding the reduction of regulatory paperwork burdens. The proposed information collection requirement meets the guidelines set forth in 5 CFR 1320.6, General Information Collection Guidelines.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. While we are proposing a significant reduction in reporting burden for motor carriers of passengers, the cost savings will not be material in relation to total operating expenses and only Class I carriers will be affected. We request your comments on this issue.

This decision will not signficantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1206

Buses, Motor carriers, Uniform System of Accounts, Administrative Practice and Procedure

49 CFR Part 1249

Buses, Motor carriers, Reporting Requirements, Administrative Practice and Procedure

These rules are proposed under the authority of 49 U.S.C. 11142 and 11145 and 5 U.S.C. 553.

Decided: May 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley commented with a separate expression, and Commissioner Simmons concurred in the issuance of the Notice of Proposed Rulemaking.

James H. Bayne,

Secretary.

Commissioner Lamboley, Commenting

I concur with the decision to notice and accept comment on this proposal. I would, however, extend the time for filing comments as was done in No. 38904, *Elimination of Accounting and Reporting Requirements For Motor Carriers of Property.*

Before adopting final rules, the Commission should consider also the results of an ongoing industry study that will make recommendations concerning which data should be retained and which should be eliminated. This would be in accord, too, with the expression of Congressional concern as stated in the House Report accompanying the Supplemental Appropriations Bill, 1985 (see H.R. 2577).

Appendix A

Part 1249 of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 1249—REPORTS OF MOTOR CARRIERS

1. The authority citation for Part 1249 would continue to read as follows:

Authority: 49 U.S.C. 12 and 20, unless otherwise noted.

2. Section 1249.3 would be revised to read as follows:

§ 1249.3 Classification of carriers—motor carriers of passengers.

(a) Common and contract carriers of passengers subject to the Interstate Commerce Act are grouped into the following two classes:

Class I—Carriers having average annual gross operating revenues (including interstate and intrastate) of $3 million or more from passenger motor carrier operations.

Class II—Carriers having average annual gross operating revenues (including interstate and intrastate) of less than $3 million from passenger motor carrier operations.

(b) (1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after applying the revenue deflator formula in the Note. If at the end of any annual accounting period (calendar year basis ending on or near December 31 is required) such annual carrier operating revenue is greater than the maximum for Class II carriers, the carrier shall adopt the reporting requirements of Class I carriers. The adoption of Class I shall be effective as of January 1 of the third succeeding year after the carrier meets and maintains the minimum revenue limit for Class I.

(2) If at the end of any calendar year a carrier's operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the reporting requirements of the lower class in which the current year revenue falls. Adoption of the lower class shall be effective as of January 1 of the following year.

(3) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in the Note.

(4) When a business combination occurs, such as a merger reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in the Note.

(5) Carriers shall notify the Commission of any change in classification by writing to the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423.

(c) For classification purposes, the Commission shall publish in the **Federal Register** annually an index number which shall be used for adjusting gross annual operating revenues. The index number (deflator) is based on the average Producer Price Index and is used to eliminate the effects of inflation from the classification process.

3. Section 1249.4 would be revised to read as follows:

§ 1249.4 Annual and quarterly reports of Class I carriers of passengers.

(a) All Class I motor carriers of passengers shall complete and file Motor Carrier Quarterly and Annual Report Form MP–1 (Form MP–1). Class II carriers are not required to file Form MP–1.

(b) Motor Carrier Quarterly and Annual Report Form MP–1 shall be used to file both quarterly and annual selected motor carrier data. The annual accounting period shall be based on a calendar year basis ending on or near December 31. The quarterly accounting period shall end on March 31, June 30, September 30, and December 31. The quarterly report shall be filed within 30 days after the end of the reporting quarter. The annual report shall be filed on or before March 31 of the year following the year to which it relates.

(c) The quarterly and annual report shall be filed in duplicate to the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423.

4. A new § 1249.5 would be added to read as follows:

§ 1249.5 Records.

Books, records and carrier operating documents shall be retained as prescribed in 49 CFR 1220, Preservation of Records.

Note. Each carrier's operating revenues will be deflated annually usng the All Commodities Producers Price Index (PPI) before comparing them with the dollar revenue limits prescribed in paragraph (a). The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenues} \times \frac{\text{1980 average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues}$$

§§ 1249.11 and 1249.12 [Removed]

5. Sections 1249.11 and 1249.12 would be removed.

Appendix B

Motor Carrier Quarterly and Annual Report Form MP–1

Class I—Motor Carrier of Passengers

Approved by:

Expires:

Quarterly and Annual Report to the Interstate Commerce Commission

Carrier Name and Address
(Attach address label here, if available)

MC Number _____

Report Year _____

1. Period Covered (Check Box) (Quarter)
First ☐ Second ☐ Third ☐
Fourth ☐ Annual ☐

2. Type of Operation Based on Major Sources of Revenues (Check One)
[ ] Regular route service
[ ] Charter service

	Inter-state	Intra-state	Total
3. Number of Passengers:			
(a) Intercity regular route			
(b) Charter or special			
(c) Local or commuter			
(d) Total passengers			
4. Revenues:			
(a) Intercity regular route	$	$	$
(b) Charter or special	$	$	$
(c) Local or suburban	$	$	$
(d) Express and other property	$	$	$
5. Total Operating Revenues	$	$	$

6. Total Operating Expenses—$_____
7. Net Carrier Operating Income—$_____
8 Extraordinary Items, Net of Taxes—$_____
9. Total Provision for Income Taxes—$_____
10. Net Income—$_____
11. Total Assets—$_____
12. Total Liabilities—$_____
13. Shareholders Equity—$_____
14. Operating Ratio—$_____

CERTIFICATION

I hereby certify that this report was prepared by me or under my supervision, that I have examined it, and that the items herein reported on the basis of my knowledge and belief are correctly shown.

Name and Title Date

Address (Street address, City, State & Zip Code

Telephone No. (include Area Code)

[FR Doc. 85-15386 Filed 6-26-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 124
Thursday, June 27, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Citizens' Advisory Committee on Equal Opportunity; Meeting

Correction

In the issue of Wednesday, June 19, 1985, make the following correction in the document on page 25435: In the second column, in the file line, "Fk Doc. 85–14670" should read "FR Doc. 85–14670a".

BILLING CODE 1505-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1984 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: July 17, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington, D.C.

Agenda:

General Session

1. Opening remarks by the Chairman.
a. Summary of TAC chairmen's meeting.
b. Outline of 1985 TAC goals.
2. Presentation of papers or comments by the public.
3. Solicitation of inputs on needed area of commodity decontrol or relaxation of export controls.
4. Old committee business.
5. New committee business.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes call 202–377–2583.

Dated: June 24, 1985.

Margaret A. Cornejo,

Acting Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–15416 Filed 6–26–85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committee will convene public meetings at the Marriott's Casa Marina Resort, Reynolds Street on the Ocean, Key West, FL, to consider spiny lobster plan objectives and mechanisms for limiting effort; review stone crab and reef fish monitoring reports, and consider amendment action for the Shrimp and Reef Fish Fishery Management Plans.

The Council meeting will convene at 8:30 a.m., July 10, 1985, and recess at approximately 5 p.m.; reconvene July 11, at 8:30 a.m., and adjourn at approximately noon. Committee meetings of the Council will be held July 8–9. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 24, 1985.

Carmen J. Blondin,

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

[FR Doc. 85–15486 Filed 6–26–85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda (published June 20, 1985, at 50 FR 25735) for the public meetings and hearing on July 10–11, 1985, of the Pacific Fishery Management Council and its advisory bodies has been changed. A public hearing on foreign and joint venture permit restrictions sponsored by the National Marine Fisheries Service for July 10, at 7 p.m., *will not be convened and has been rescheduled* for September 1985. All other information remains unchanged. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: June 24, 1985.

Carmen J. Blondin,

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

[FR Doc. 85–15485 Filed 6–26–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

June 24, 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 28, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the agreement, effected by exchange of notes dated December 1, 1982, as amended, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) have agreed to merge braided and non-braided luggage, handbags and flatgoods of man-made fibers in Category 670. As a result of this agreement, the limits for Category 670 are being increased to 67,594,967 pounds for luggage in TSUSA numbers 706.4144, 706.4152, and 706.3420, to 38,436,937 pounds for handbags in TSUSA numbers 706.4140, and 706.3410 and to 3,709,234 pounds for flatgoods in TSUSA numbers 706.3900 and 706.3430 which include sublimits within each for the braided products. These adjusted limits apply to goods exported during 1985 and are subject to annual growth and swing or shift for the duration of the agreement.

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.

June 24, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during 1985.

Effective on June 28, 1985, the directive of December 21, 1984 is hereby further amended to include the following adjusted limits for man-made fiber textile products in Category 670:

Category	Adjusted 12-month restraint limit [1]
670 pt.[1]	67,594,967 pounds of which not more than 3,094,967 pounds shall be in TSUSA number 706.3420.
670 pt.[2]	38,436,937 pounds of which not more than 436,937 pounds shall be in TSUSA number 706.3410.
670 pt.[3]	3,709,234 pounds of which not more than 109,234 pounds shall be in TSUSA number 706.3430.

[1] In Category 670 only TSUSA numbers 706.4144, 706.4152 and 706.3420.
[2] In Category 670 only TSUSA numbers 706.4140 and 706.3410.
[3] In Category 670 only TSUSA numbers 706.3900 and 706.3430.

Textile products in Category 670 pt. (only TSUSA numbers 706.3410, 706.3420 and 706.3430) 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.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–15418 Filed 6–26–85; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 25, 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 27, 1985. For further information contact Diano Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 19, 1985, a notice was published in the **Federal Register** (50 FR 15601), which established an import restraint limit for cotton infants' sets in Category 359pt. (only T.S.U.S.A. numbers 383.0339, 383.0341, 383.0342, 383.0344, 383.0856, 383.0857, 383.0858, 383.0859, 383.0861, 383.3045, 383.3046, 383.3047, 383.3048, 383.5062, 383.5063, 383.5067, 383.5069, and 383.5072), produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on March 29, 1985. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 1,112,732 pounds.

No solution has been reached in consultations on a mutually satisfactory limit. The United States Government has decided, therefore, to control imports of cotton infant's sets in Category 359pt., exported during the twelve-month period beginning on June 27, 1985 at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

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.

June 25, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June

27, 1985, entry for consumption and withdrawal from warehouse for consumption of cotton textile products in category 359pt.,[1] produced or manufactured in China and exported during the twelve-month period beginning on June 27, 1985 and extending through June 26, 1986, in excess of 1,112,732 pounds.[2]

Textile products in Category 359pt.[1] which are in excess of the 90-day limit previously established 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 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 these actions fall 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. 85-15479 Filed 6-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Further Adjusting the Import Restraint Limit for Certain Apparel Products Produced or Manufactured in Taiwan

June 24, 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 28, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 9, 1985 a notice was published in the **Federal Register** (50 FR 18563) announcing that, pending further consultations between the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA), certain charges were being made to the restraint limits established for man-made fiber headwear in Category 659pt. (only TSUSA items 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, and 703.1000), exported during 1983, 1984, and 1985, to account for understated weights on the entry documents for these goods during 1983 and 1984. In consultation held May 21, 1985 AIT and CCAA agreed to charge the 750,064 pounds currently charged to the 1985 limit for Category 659pt. over a three-year period beginning in 1985 and extending through 1987 in the following amounts: 200,000 pounds (1985), 275,032 pounds (1986) and 275,032 pounds (1987). Charges previously made to the limits for 1983 and 1984 will remain unchanged. Accordingly, in the letter to the Commissioner of Customs which follows this notice the CITA Chairman requests a deduction of 550,064 pounds from the charges made to the 1985 limit for Category 659pt. Appropriate charges will be made to the 1986 and 1987 limits when import controls are established for those agreement periods.

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.

June 24, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the agreement, effected by exchange notes dated December 1, 1982, as amended, concerning imports of cotton, wool and man-made fiber textiles and textile products from Taiwan, I request that, effective on June 28, 1985, you deduct 550,064 pounds from charges made to the limit established in the directive of December 21, 1984 for Category 659pt. (only TSUSA items 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, and 703.1000), produced or manufactured in Taiwan and exported during 1985.

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 Textiles and Agreements.

[FR Doc. 85-15517 Filed 6-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Temporary Visa Waiver for Certain Man-Made Fiber Sweater Jackets

June 24, 1985.

On May 24, 1985 a notice was published in the **Federal Register** (50 FR 21485) announcing a temporary visa waiver procedure for certain man-made fiber sweater jackets of 100 percent acrylic heavy guage knit with knit pile sherpa-style linings, visaed as sweaters in Category 646.

The purpose of this notice is to advise the public that a decision has been reached also to permit importers having acrylic knit sweater jackets with quilted nylon linings with polyester fiber filling, visaed as sweaters in Category 646 and entered or withdrawn from warehouse for consumption in the United States by September 1, 1985, regardless of the date of export, but within the limits of existing quotas, to obtain waivers of the new requirement for a Category 635 visa by addressing requests to:

Office of Textiles and Apparel,
International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce,
Washington, D.C. 20230, Attention: Waivers

The following information should be included:

Port of Entry (indicating whether airport or seaport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and T.S.U.S.A. Number
Quantity (units as set out in the T.S.U.S.A.)
Entry Number of Bill of Lading Number
Country of Origin
Date of Export
Exporter

Information included in any request for a waiver is subject to Section 1001 of Title 18 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15515 Filed 6-26-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only T.S.U.S.A. numbers 383.0339, 383.0341, 383.0342, 383.0344, 383.0856, 383.0857, 383.0858, 383.0859, 383.0861, 383.3045, 383.3046, 383.3047, 383.3048, 383.5062, 383.5063, 383.5067, 383.5069, and 383.5072.

[2] The restraint limit has not been adjusted to account for any imports exported before June 27, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Armed Forces Radio and Television Service Audience Survey

The Armed Forces Radio and Television Service Audience Survey will be used to obtain listening and viewing habits and preferences from military members and their spouses and from DoD civilians and their spouses. As programming availability and audience size are both increasing all over the world while manpower is decreasing, AFRTS must determine the value of its current services and look for ways to serve a more knowledgeable and moble audience.

Public Individuals
Responses 22,400
Burden hours 7,840

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collected proposal may be obtained from Mr. Marc Dyer, Armed Forces Radio and Television Service, American Forces Information Service, (OASD(PA)), The Pentagon, Washington, DC 20301, telephone (202) 696–5279.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 24, 1985.

[FR Doc. 85–15389 Filed 6–26–85; 8:45 am]

BILLING CODE 3810-01-M

Military Traffic Management Command, Directorate of Personal Property; Nonuse and Disqualification Action Taken Against Freight Carriers

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of decision on a procedural change relative to nonuse and disqualification action taken against freight carriers.

SUMMARY: Notice is hereby given of a procedural change regarding the application and scope of actions taken by the Department of Defense (DOD) to discontinue use of carriers participating in the movement of DOD freight and personal property shipments. The MTMCR No. 15–1, Transportation and Travel, Procedures for Disqualifying and Placing Carriers in Nonuse (12 Dec 84) provides the basis for such actions.

All nonuse and disqualification actions taken against freight carriers by Headquarters, Military Traffic Management Command (HQMTMC), MTMC area commands and DOD shippers will also affect those carriers' participation in the continental United States line haul portion of containerized personal property Direct Procurement Method (DPM) shipments, as applicable. Conversely, disqualification actions taken against personal property carriers may be extended to affect those carriers' participation in the transport of DOD freight traffic, as applicable.

FOR FURTHER INFORMATION CONTACT:

Mr. John Lambert, HQMTMC, Attention: MT–IN, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, Telephone: (703) 756–1887

or

Mr. Frank Galluzzo, HQMTMC, Attention: MT–PP, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, Telephone: (703) 756–1691.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 85–15456 Filed 6–26–85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Armed Forces Institute of Pathology Scientific Advisory Board.

Date of meeting: August 5, 1985.

Time: 0900 hours.

Proposed Agenda: To complete the review of the Hematopathology Department.

This meeting is closed to the public in accordance with Title 5, U.S.C. 552(c)(6). For the Director.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 85–15491 Filed 6–26–85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Offshore Artificial Production Island and 13,000 Foot Gravel Causeway Located in Prudhoe Bay Near Deadhorse, AK

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement for a Regulation Action.

SUMMARY: 1. ARCO Alaska, Incorporated has applied for Department of the Army authorization to construct a 750' × 750' offshore artificial production island and a 13,000' gravel causeway located in Prudhoe Bay. Approximately 2 million cubic yards of gravel would be required to construct the island and causeway. The purpose of the production island would be to facilitate the development of the Lisburne hydrocarbon reservoir. It would be designed to allow for 24 production wells and 8 gas injection wells. The gravel causeway would provide access to the artificial island from the west shore of Prudhoe Bay. It would also support three pipelines which include a flowline for production fluids, a high pressure gas line, and a conduit for electrical transmission lines.

2. Project alternatives to be considered, in addition to the proposed action, include the construction of the artificial island without a causeway, the construction of the island and a

causeway with substantial breaching, and no action.

3. The scope of the DEIS will be determined by reviewing concerns raised during meetings, hearings, and workshops, and by encouraging and seeking involvement of individuals, organized groups, and local, State and Federal agencies. These groups and other interested parties are invited to actively participate in the scoping process by expressing ideas and concerns related to the proposed project.

Significant issues to be analyzed in the DEIS will be determined by the ongoing public involvement and by local, State and Federal agency comments. To date, significant issues include the individual and cumulative effects relating to the loss of anadromous fish habitat, hindrance to anadromous fish migration, changes in current and circulation patterns and water quality (salinity and temperature), and coastal processes.

4. Several scoping meetings are scheduled to be held in various locations in the State of Alaska. These meetings are scheduled to be held in Anchorage, Fairbanks, Barrow, Kaktovik, and Nuigsuit during the last two weeks of August. Meeting places, dates and times will be public noticed by the Corps of Engineers at least thirty days before each meeting.

5. At this time it is estimated that the DEIS will be available to the public on May 1, 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Joseph F. Williamson, Regulatory Branch, U.S. Army Corps of Engineers, Alaska District, Post Office Box 898, Anchorage, Alaska 99506-0898.

Dated: June 18, 1985.

Jeffrey B. Staser,

Major, Corps of Engineers, Deputy District Engineer for Civil Works.

[FR Doc. 85-15469 Filed 6-26-85; 8:45 am]

BILLING CODE 3710-NL-M

Intent To Prepare an Environmental Impact Statement for the Addition of a 600-Foot Second Lock at the Lock and Dam No. 26 (Replacement) Project, Alton, IL

AGENCY: St. Louis District, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Addition of a 600 Foot Second Lock at the Lock and Dam No. 26 (Replacement) Project, Alton, Illinois.

SUMMARY:

1. Proposed Action

The proposed action consists of preparing a draft and final environmental impact statement addressing the feasibility of constructing a 600 foot second lock at the Lock and Dam No. 26 (Replacement) project on the Mississippi River near Alton, Illinois. A second lock has not been authorized for construction.

2. Background

In addition to directing the U.S. Army Corps of Engineers to construct a new Lock and Dam No. 26 with one lock 1200 feet in length, Pub. L. 95-502 directed the Upper Mississippi River Basin Commission to prepare a comprehensive Master Plan for the management of the Upper Mississippi River System. The Commission prepared this Master Plan in cooperation with appropriate Federal, state, and local officials and submitted it to Congress in January, 1982. One of its recommendations was, "That Congress immediately authorize the engineering, design, and construction of a second chamber, 600 feet in length, at Lock and Dam 26." This report also recommended "that Congress exempt the construction of a second chamber at Lock and Dam 26 from further action under the National Environmental Policy Act of 1969 (Pub. L. 91-190)."

As authorized, and presently being constructed, the project involves the construction of one 1200-foot lock and a new gated dam with 9 tainter gates and an overflow dike. Construction was initiated in November 1979 and is approximately 33 percent complete. Public Law 95-502 stated that, "The lock and dam . . . shall be designed and constructed to provide for possible future expansion." Construction is underway for the first stage dam and is expected to be complete in September 1985. The next major contract, the 1200-foot lock, was awarded on 28 September 1984 and construction is underway. The third stage of work consists of completing the remainder of the dam and a closure structure and is scheduled for award in early 1988.

Preliminary engineering and design must begin at this time in order to be able to construct a second lock in an orderly manner in the third stage of construction, should Congress authorize a second lock by the time the third stage is scheduled to begin. If a second lock is not authorized by this time, it would be necessary to construct a closure structure in place of the lock. Savings of approximately $90 million could be realized if the second lock is phased in with ongoing construction, instead of adding it after completion of the authorized project with a closure structure. Although authorization of a second lock is not assured, the St. Louis District, Corps of Engineers was directed by the Director of Civil Works on 8 March 1985, to proceed with engineering and design of a second lock. This authority for design does not include preparation of plans and specifications (final design).

The preparation of an environmental impact statement (EIS) is part of the authorized engineering and design work. The Upper Mississippi River Basin Commission's "Master Plan" recommended that the second lock be exempted from the National Environmental Policy Act. However, since Congress has not adopted this recommendation, the Corps of Engineers is required to comply with the requirements of this Act.

3. Alternatives

The Upper Mississippi River Basin Commission's "Master Plan" is the plan formulation document which identifies those alternatives evaluated prior to recommending a 600 foot second lock. The environmental impact statement will include a discussion of these alternatives.

4. Scoping Process

a. *Public Involvement:* We are inviting the participation of affected Federal, state, and local agencies and other interested organizations and individuals. The scoping process, as outlined by the Council of Environmental Quality (29 November 1978), will be a continuous ongoing process throughout the preparation of this environmental impact statement. Public meetings will be held in St. Paul, Minnesota; Rock Island, Illinois; and St. Louis, Missouri.

b. *Significant Issues:* Significant issues include the analysis of impacts and the level of mitigation attributed to the construction of a 600 foot second lock.

c. *Lead Agency:* The St. Louis District, U.S. Army Corps of Engineers is the lead agency responsible for the preparation of the environmental impact statement.

d. *Environmental Review and Consultation Requirements:* The completed draft environmental statement will be distributed to the appropriate Federal, state, and local agencies, and representatives of interested groups and individuals. It will contain records of compliance with appropriate laws and regulations.

5. Scoping Meetings

Scoping meetings will be scheduled with Federal, state, and local agencies throughout the preparation stages of this environmental impact statement.

6. Draft Environmental Impact Statement

The DEIS is scheduled to be complete in May 1986.

ADDRESS: Questions about the proposed action should be addressed to: Mr. Owen D. Dutt, Chief, Environmental Analysis Branch, U.S. Army Engineer District, St. Louis, 210 Tucker Blvd., North, St. Louis, MO 63101–1986, Commercial Phone: (314) 263–5711, (FTS) 273–5711.

Dated: June 20, 1985.

Gary D. Beech,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–15470 Filed 6–26–85; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 29, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 24, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: New
Title: Performance Report for the Talent Search, Upward Bound and Educational Opportunities Centers Programs
Agency Form Number: ED 366, ED 712 and ED 896
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 620 Burden Hours: 3,100
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The performance report is used to collect data and narrative information from grantees to provide programmatic and fiscal information to comply with regulatory requirements.

Type of Review Requested: Extension
Title: Fiscal Operations Report and Application to Participate in the National Direct Student Loan, Supplemental Education Opportunity Grants and College Work-Study Program [Electronic Transfer-Gateway]
Agency Form Number: ED 646–1
Frequency: Annually
Affected Public: Postsecondary Institutions
Reporting Burden: Responses: 800; Burden Hours: 3,200
Recordkeeping Burden: Recordkeepers: 800; Burden Hours: 20,296

Abstract: Federal regulations require an institution to apply and subsequently report the expenditures for the campus-based programs on an annual basis. The data collected is used to calculate the need of the reporting institutions annually.

Type of Review Requested: Revision
Title: Guarantee Agency Quarterly/Annual Report
Agency Form Number: ED 1130
Frequency: Quarterly; Annually
Affected Public: State or local governments
Reporting Burden: Responses: 300; Burden Hours: 360
Recordkeeping Burden: Recordkeepers: 60; Burden Hours: 2,200

Abstract: The Guarantee Agency Quarterly/Annual Report is submitted by 60 agencies operating student loan insurance programs under agreement with the Department of Education. The reports are used to evaluate agency operations, to make payments to agencies as authorized by law, and to make reports to Congress and others.

[FR Doc. 85–15442 Filed 6–26–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Atlantic Richfield Co.

AGENCY: Economic Regulatory Administration, Energy.

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 Atlantic Richfield Company (ARCO) shall be made final as proposed. The consent order resolves, with certain exceptions, matters relating to ARCO's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. ARCO will pay to the DOE $65.7 million, plus interest from the date of execution of the proposed consent order. Persons claiming to have been harmed by ARCO's alleged overcharges will 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 ARCO consent order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT:
Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1985, ERA issued a notice announcing a proposed consent order between DOE and ARCO which, with certain exceptions, would resolve matters relating to ARCO's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 50 FR 8366 (March 1, 1985). The proposed order, which requires ARCO to pay $65.7 million,[1] is for the settlement of ARCO's potential liability for $66 million in alleged overcharges plus attributable interest. The March 1 notice provided in detail the basis for ERA's preliminary view that the settlement was 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. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on April 4, 1985.

II. Comments Received

ERA received seven written comments with two comments filed after the April 1, 1985 deadline.[2] Two oral presentations were given at the April 4, 1985 hearing. All written and oral comments were considered in making the decision as to whether or not the proposed consent order be made final.

The written and oral comments can be divided into two subject categories. One category consists of three comments that addressed the ultimate disposition or distribution of the ARCO settlement funds. The other category includes two comments directed at the adequacy of the settlement amount. Each of the two remaining comments address both subject categories.

Comments were received from the following groups or individuals that expressed views on the ultimate disposition of the funds to be paid by ARCO pursuant to the settlement:

Attorneys General for Arkansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia.
Attorney General of Texas
ARCO Distributors Group

The comments submitted by these parties did not address the basis of the settlement or adequacy of the settlement amount, but only offered suggestions on the distribution of the settlement funds that were different from the consent order provisions requiring disbursement through OHA administrative claim proceedings.

The two comments that addressed the basis and adequacy of the proposed settlement were submitted by:

Air Transport Association, Washington, D.C.
Controller, State of California

These commenters raised questions concerning the adequacy of the amount of funds to be paid by ARCO and the method by which ARCO's liability had been calculated by ERA.

The two comments that addressed both the distribution of the settlement funds and the adequacy of the settlement were submitted by:

Minnesota Department of Energy and Economic Development
Philadelphia Electric Company; National Freight, Inc.; RJG Cab, Inc.; Geraldine H. Sweeney

III. Analysis of Comments

The March 1 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the March 1 notice provided detailed information regarding ARCO's alleged overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

Some comments, relating to the ultimate distribution of the funds if the ARCO consent order is finalized, were not germane to the basis or adequacy of the settlement. The distribution of the settlement funds will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals (OHA), to be initiated shortly after publication of this notice. This is consistent with ERA's general policy that the Subpart V procedures of 10 CFR Part 205, are best suited for cases such as ARCO where ERA could not readily identify the injured parties or their relative amount of economic harm. Comments on the actual disbursement of the monies will not be addressed here, but will be referred to OHA for consideration in the ARCO consent order claims proceeding.

Among the concerns that ERA had in seeking public comment on the proposed settlement was the need to address ARCO's actual financial liability resolved by this proposed consent order, and to explain the difference between "overcharges" and "cost violations". As discussed more fully in the March 1 notice, as well as this notice, ARCO's $806 million in alleged cost violations identified by ERA are *not* the equivalent of overcharges. These cost violations yielded overcharges of only $29 million, excluding interest. It is this overcharge amount plus attributable interest which is the true maximum amount of ARCO's liability for the $806 million in alleged cost violations.

Several commenters questioned the settlement analysis and preliminary conclusions set forth in the March 1 notice. These comments were carefully reviewed and are discussed below.

The Air Transport Association; the State of California; the Minnesota Department of Energy and Economic Development; and Philadelphia Electric Company, National Freight, Inc., RJG Cab, Inc., and Geraldine H. Sweeney, in a joint comment, indicated that notwithstanding the substantial amount of information provided in the March 1 notice, they still lacked sufficient information upon which to base a judgment as to whether the settlement amount was adequate. Those comments generally expressed concern that ARCO's total maximum exposure as calculated by DOE and identified in the March 1 notice seemed small in light of the total alleged cost overstatements of over eight hundred million dollars, and that the basis for DOE's reduction in alleged crude oil overcharges on unaudited properties was insufficiently explained. However, even in response to specific questions at the public hearing, no commenter identified or provided any additional specific information that contradicted ERA's preliminary conclusions.

In the March 1 notice, ERA sought to provide the maximum amount of information possible. Statutory

[1] ARCO deposited $65.7 million in an interest bearing escrow account on the day the proposed consent order was executed. The $65.7 million, plus interest accrued while in the escrow account, will be disbursed to DOE within 30 days of publication of this notice. The interest accrued as of June 15, 1985 is approximately $1.9 million.

[2] One individual provided a copy of a court complaint filed against ARCO by some of ARCO's purchasers; however, the individual did not comment on the ARCO consent order.

constraints on the release of proprietary data received from ARCO in the course of the audit and the need to avoid hindering the prosecution of enforcement actions against other firms placed some limitations on the disclosure of information concerning the enforcement actions resolved by the proposed settlement. However, a further review of the scope of disclosure in the March 1 notice has resulted in ERA's continued belief that the March 1 notice provides sufficient information to assess its adequacy and the most information possible consistent with all of ERA's obligations and needs. This conclusion is reinforced by the inability of those who made comments on the point to identify any additional specific information that might be helpful.

As indicated in the March 1 notice, allegations that ARCO claimed excessive amounts of costs are to be distinguished from allegations that these excessive costs resulted in overcharges on a dollar-for-dollar basis in ARCO's sales of petroleum products. The former seek accounting adjustments necessary to calculate accurate maximum lawful prices. The latter allege the charging of a price in excess of that maximum lawful price. Since ARCO had substantial amounts of cost increases that it could have lawfully recovered but did not ("banks of unrecovered costs" or "banks"), even after substantial reductions of its claimed cost increases, the prices charged by ARCO for covered petroleum products during the period of controls would, in many instances, have been justified by the remaining available costs, even if such reductions had been made. This accounts for the sizable differences in the amount of alleged cost violations and the amount of overcharges resulting from those violations.

As explained in the March 1 notice, ERA determined what it believed to be ARCO's correct amounts of cost increases and then compared these costs, on a monthly basis, with the amounts of increased costs that ARCO actually recovered through price increases above the May 15, 1973 level. The result was the maximum amount of overcharges attributable to ARCO if the government eventually prevailed on all of the various issues regarding the correct amount of ARCO's cost increases.

One commenter, the State of California, questioned the appropriateness of considering ARCO's banks in calculating the overcharge liability resulting from the alleged violations and incorporated by reference the comments previously submitted by California and several other states on the proposed consent order with Mobil Corporation. The comments correctly noted that there is a difference between the DOE's method of assessing ARCO's regulatory compliance and resulting potential overcharge liability as outlined in the March 1 notice and the analysis sometimes used in Subpart V proceedings by OHA for determining the extent to which overcharges were absorbed by the first purchaser, *i.e.*, the amount of harm incurred by a purchaser who may have paid an excessive price but who subsequently had an opportunity to "pass through" some or all of that excess upon reselling the product. The commenters seem to assume that these two analytical processes should be the same. The two approaches are not the same. In fact, the processes must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed. In these proceedings, refiners making claims particularly have urged OHA to consider their "banks" of unrecouped costs as evidence conclusively demonstrating that they were injured by the full measure of overcharges they incurred. OHA has consistently maintained that the absence of banks simply shows that all cost increases by a firm (whether lawful or consisting of overcharges) were passed on, and that the mere presence of banks means that only some cost increases (whether lawful or whether the result of overcharges) were not recovered as calculated under the regulatory scheme. In a number of cases OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity. Accordingly, in the context of a proceeding conducted to make an equitable distribution of refunds, the mere fact that a refiners' banks exceeded the amount it was overcharged would not demonstrate the extent to which the refiner had been harmed.

OHA performs this analysis of banks and cost passthroughs in an effort to assure that first purchasers who are not end-users do not reap the benefits of consent orders at the expense of other persons who were economically injured further along in the distribution chain. In fact, if the mere existence of banks were proof that overcharges had been absorbed, each firm in the distribution chain that had such banks could each assert that they had absorbed the same overcharges.

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge liability in the context of the refiner pricing regulations which were in effect during the period of price controls. From an enforcement standpoint the principal question is the degree to which overcharges were committed by the seller, not the distribution of that harm throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

Finally, one commenter expressed the view ARCO should be required to withdraw from *Atlantic Richfield Co. & National Helium Co.* v. *Department of Energy*, C.A. No. 84-190 (D. Del.); *In Re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kansas); and *Diamond Shamrock Refining & Marketing Co.* v. *Standard Oil Co.* v. *Department of Energy*, C.A. No. C2-84-1432 (S.D. Ohio), or to reduce its crude oil costs to take into account any money it may receive from those cases. Pursuant to paragraph 501(b) and 501(d) of the consent order, the *Stripper Well Exemption Litigation* and the *Diamond Shamrock* litigation, both involving stripper well overcharges, are excluded from the scope of the consent order. In fashioning a consent order to resolve a company's compliance with the federal petroleum price and allocation regulations, DOE assesses a company's liability based upon DOE's audit findings and enforcement allegations. The settlement includes no consideration for potential recoveries or payments by ARCO in any pending proceeding excluded from the consent order, nor does it include consideration for additional payments ARCO may have to make in an action not brought by DOE. Any attempt to assess such exposure or recovery with respect to ARCO is far too speculative.

The review and analyis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed consent order with ARCO.[3] Accordingly, ERA concludes

[3] However, ARCO did agree to modifications of paragraph 601, *Reporting, Recordkeeping Requirements and Confidentiality*. The revised paragraph 601 provides that ARCO retain records containing sales volume and customer identification data for a period of at least six months after payment to DOE of the settlement funds and, if requested, that ARCO make that information available to DOE to assist DOE in distributing the settlement monies. Accordingly, the Consent Order provisions are consistent with the requirements of the recordkeeping rule, 10 CFR 210.1, which was amended after the consent order terms were negotiated (50 FR 4957 (Feb. 5, 1985).

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 ARCO and DOE executed on January 23, 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 June 19, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-15427 Filed 6-26-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-165-000]

Distrigas of Massachusetts Corp.; Tariff Filing

June 24, 1985.

Take notice that on June 19, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing Original Sheet Nos. 8 and 9 to its FERC Gas Tariff, First Revised Volume No. 1.

The filing provides for the recovery of unrecovered purchased LNG costs resulting from the failure or refusal of certain of DOMAC's customers to take or pay for their pro rata share of each cargo of LNG imported between April 1 and September 30, 1985. The unrecovered purchased LNG costs created by customers' refusal to make their contractual purchases shall equal the difference between the amounts payable under DOMAC's GS-1 Rate Schedule and the proceeds, less out-of-pocket costs, from the sale of the LNG under temporary certificate authorization. DOMAC shall assign these unrecovered LNG costs directly to the customer that refuses tendered contract volumes to the extent that such customer is responsible for the underrecovery. Customers that take their full contract volumes on a cargo basis will be assigned no unrecovered purchased LNG costs.

DOMAC requests that the proposed tariff sheets become effective without refund obligation 30 days from the date of the filing.

A copy of this filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15448 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7512-003]

Granite Associates; Surrender of Preliminary Permit

June 24, 1985.

Take notice that Granite Associates, Permittee for the Granite Power Project No. 7512, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7512 was issued May 11, 1984, and would have expired October 31, 1985. The project would have been located on Granite Creek in King County, Washington.

The Permittee filed the request on June 7, 1985, and the preliminary permit for Project No. 7512 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. 85-15449 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-26-000 and TA85-2-26-001]

Natural Gas Pipeline Company of America; Change in Rates

June 24, 1985.

Take notice that on June 19, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective July 1, 1985:

Substitute Fifth-eight Revised Sheet No. 5
Substitute Twenty-fifth Revised Sheet No. 5A

Natural states that the purpose of the instant filing is to implement a 9.58¢ per MMBtu decrease in the commodity component of its sales rates effective July 1, 1985. The rate decrease is the result of its exercise of market out clauses and other gas purchase contract provisions under certain of its gas purchase contracts. The rate reduction reflects the effect of a market out price of $2.50 per MMBtu which will become effective on July 1, 1985. This market out price is further reduced by the amount of any associated transportation costs per MMBtu incurred by Natural to receive such supply into its pipeline system.

Natural states that the filing is based on the projected purchase mix underlying its most recent PGA filing which was approved to be effective March 1, 1985, in an order issued by the Commission on May 21, 1985, at Docket Nos. TA85-1-26, *et al.* No changes to producers under contracts in which market out rights were exercised.

Natural requests waiver of the Commission's regulations and section 18 (PGA) of its FERC Gas Tariff, Third Revised Volume No. 1 to the extent required to permit the tariff sheets to become effective on July 1, 1985.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15451 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-10-012]

Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.; Revisions to Rate Schedule

June 24, 1985.

Take notice that on June 17, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1985:

Third Revised Sheet No. 87
Fourth Revised Sheet No. 88

Tennessee states that the purpose of the revised tariff sheets is to revise its Rate Schedule IT in three major respects: (1) Provide that Tennessee may charge a transportation customer for the FERC filing fees associated with the service; (2) provide that Tennessee can recover any third-party charges which it incurs in rendering transportation service; and (3) to state the fuel factor applicable to these services.

Tennessee states that it, the Commission Staff, and active intervenors agree that the last revision mentioned above moots an issue related to the IT Rate Schedule which is currently pending before the Commission on exceptions to an Initial Decision issued in Docket No. RP80-97, *et al.*, 25 FERC ¶ 63,052 (1983).

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15452 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-17-000 and TA85-2-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 24, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 19, 1985 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, and Original Volume No. 2, six copies each of the following tariff sheets:

Fourth Revised Volume No. 1

Revised Seventy-third Revised Sheet No. 14 (3 pages)
Revised Seventy-third Revised Sheet No. 14A
Revised Seventy-third Revised Sheet No. 14B
Revised Seventy-third Revised Sheet No. 14C
Revised Seventy-third Revised Sheet No. 14D
Revised Twelfth Revised Sheet No. 14E

Original Volume No. 2

Nineteenth Revised Sheet No. 235
Eleventh Revised Sheet No. 241
Twentieth Revised Sheet No. 322

The above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and Section 27, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. These sheets are also being issued pursuant to Article XI, Staten Island LNG Facility, contained in the Stipulation and Agreement in Docket No. RP78-87 approved by Commission order issued April 4, 1980.

The changes proposed consist of:

(1) A PGA increase of $.262/dth in the demand component of Texas Eastern's rates and a decrease of $.1006/dth in the commodity component pursuant to Section 23 of Texas Eastern's tariff based on a net decrease in the projected cost of gas purchased from producers and pipeline suppliers and a negative balance in Account 191 as of April 30, 1985;

(2) Projected Incremental Pricing Surcharges for the period July, 1985 through January, 1986, pursuant to Section 23 of Texas Eastern's tariff and the Commission's regulations; and

(3) A change in rates for sales and transportation services pursuant to section 27 of Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning July 1, 1985 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC Account as of April 30, 1985.

(4) A decrease in rates under Rate Schedule SS based upon a decrease in actual costs incurred in operating and maintaining the Staten Island LNG facility for the twelve month period ended February 28, 1985, pursuant to the provisions of Article XI of the RP78-87 Stipulation and Agreement.

Texas Eastern is making this tracking filing earlier than usual in order to request an effective date for these rates of July 1, 1985, which is one month earlier than the usual effective date of August 1, 1985. Texas Eastern proposes the earlier effective date of July 1, 1985 in order that the decrease in Texas Eastern's rates will coincide with the decrease in Texas Eastern's gas cost resulting from the exercise of "market out" provisions in certain of its gas purchase contracts. Texas Eastern exercised such "market out" provisions to reduce the price under those certain gas purchase contracts to $2.75 per MMBtu plus taxes effective July 1, 1985. The impact of the exercise of the "market out" provisions is a reduction of approximately 10 cents per MMBtu in Texas Eastern's system average cost of purchased gas. Texas Eastern's proposal would flow the impact of the "market out" reduction through to the customers concurrently with the reduction in costs.

Moreover, by filing a complete PGA to be effective as of July 1, 1985, including not only the impact of the market-out as of July 1, 1985 but also the impact of other portions of the PGA including the negative balance in Account 191 as of April 30, 1985, an immediate change as of August 1, 1985 will be avoided and some measure of rate stability achieved. Moreover, it will avoid problems at the distributor level with state agency filing requirements.

Under the new pricing structure of the ProGas Limited contract dated May 17, 1979 Texas Eastern's payments to ProGas Limited involve a fixed monthly demand charge as well as a commodity charge based upon the quantity of gas purchased. Consistent with the treatment accorded charges from its pipeline suppliers Texas Eastern has reflected in this PGA adjustment the cost of gas purchased from ProGas Limited on an "as billed" basis. In the instant filing Texas Eastern's total annual demand payments to ProGas Limited equal $13,689,000.

The Commission's order issued January 31, 1984 in Texas Eastern's Docket No. TA84-1-17-001 required Texas Eastern to eliminate estimated balances for the month of November, 1983 from the Deferred Gas Cost Account Balance (Account 191) for the purpose of the surcharge calculation and further required Texas Eastern to continue this methodology in all future

PGA filings. In light of this order and discussions between Texas Eastern and the Commission Staff, Texas Eastern in this instant filing is using the six months ended April 30, 1985 Account 191 balance, exclusive of April, 1985 estimates, for the surcharge calculation.

In addition Texas Eastern has removed from the April 30, 1985 Account 191 balance amounts related to retroactive payments paid to producers for production related costs based on the Commission Order No. 94A. These costs will be the subject of a separate proposal to be filed with the Commission.

The proposed effective date of the above tariff sheets is July 1, 1985.

Texas Eastern respectfully requests waiver of the provisions of its tariff, the Stipulation and Agreement in Docket No. RP78-87 to permit adjustments as of July 1, 1985 with respect to the reduction in rates described in (4) above, and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective July 1, 1985, coincidently with the cost reduction resulting from Texas Eastern's exercise of "market out" provisions. Texas Eastern submits that good cause has been shown to grant the requested waiver and permit its PGA to go into effect as of July 1, 1985. In particular, it will permit Texas Eastern's customers to have the benefit of Texas Eastern's July 1, 1985 market-out at the earliest possible moment and, by permitting a full PGA filing, avoid an immediate change from July 1, 1985 rates on August 1, 1985 that would occur if only the market-out portion of Texas Eastern's filing is permitted to go into effect as of July 1, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspeciton.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15453 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-52-003 and RP84-77]

Western Gas Interstate Co.; Tariff Filing

June 24, 1985.

Take notice that on June 14, 1985, Western Gas Interstate Company (Western) tendered for filing the following compliance tariff sheet to its FERC Gas Tariff, Alternate First Revised Volume No. 1:

Substitute Fourth Revised Sheet No. 3A

According to Section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until June 19, 1985.

Western states Substitute Fourth Revised Sheet No. 3A complies with the Commission orders issued March 29, 1985 and June 6, 1985 in the above-captioned dockets and that the tariff sheet reflects the elimination of the 71-cent per Mcf margin provided in both the interim settlements, previously filed with the Commission, and the permanent settlement in Docket No. RP84-77-000, *et al.*, filed May 23, 1985. Western also indicates the other requirements imposed with respect to the exchange with Phillips Petroleum Company have been complied with in determining the rates on the subject tariff sheet.

Western requests whatever waivers necessary to allow its proposed tariff sheet to become effective as of February 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15454 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-552-000]

Georgia Power Co.; Notice of Filing

June 18, 1985.

The filing company submits the following:

Take notice that on June 3, 1985, Georgia Power Company ("Georgia") tendered for filing a one-year extension of its Interchange Contract with Savannah Electric and Power Company ("Savannah"), Georgia's Rate Schedule FERC No. 798. The present contract expires by its terms on May 31, 1985. Georgia states that the proposed change continues the interconnected operation of the parties' systems and provides for emergency assistance and economy energy and short-term capacity transactions; it does not contain any change in rates or charges.

Georgia requests waiver of the Commission's notice requirements to allow an effective date of June 1, 1985.

Georgia states that copies of the filing have been mailed to Savannah.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15446 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8355-001]

Carol Agnes Jacks; Surrender of Preliminary Permit

June 24, 1985.

Take notice that Carol Agnes Jacks, Permittee for the Willow Creek Power Project, FERC No. 8355, has requested

that her preliminary permit be terminated. The preliminary permit for Project No. 8355 was issued on October 27, 1984, and would have expired on March 31, 1986. The project would have been located on Willow Creek, in Humboldt County, California.

The Permittee filed the request on May 28, 1985, and the preliminary permit for Project No. 8355 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. 85-15447 Filed 6-26-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed Week of May 20 Through May 24, 1985

During the week of May 20 through May 24, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate in on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Oxnard Refining Co., Oxnard, CA, HRO-0291, Crude Oil

On May 20, 1985, Oxnard Refining Company, P.O. Box 258, Oxnard, CA, filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Enforcement Programs issued to the firm on April 10, 1985. In the PRO, the Office of Enforcement Programs charged that during August 1976-December 1976, February, April and May 1977, Oxnard received unlawful small refiner bias entitlements benefits arising from Oxnard's improper reporting of crude oil refined pursuant to processing agreements with another refiner. According to the PRO, the alleged violation resulted in Oxnard receiving $2,632,701 in excess Entitlements Program benefits.

Tampimex Oil International, Ltd., Houston, TX, HRO-0292, Crude Oil

On May 23, 1985, Tampimex Oil International, Ltd. 11 Greenway Plaza, Suite 1506, Houston, Texas 77046 filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on April 11, 1985. In the PRO the Houston District found that from January 1978 to December 1980, Tampimex charged prices in excess of its purchase price without performing any service of function traditionally or historically associated with the resale of crude oil, in violation of 10 CFR 212.186 and 210.62(c). It further alleges that Tampimex violated the provisions of 10 CFR 212.182 in its pricing of crude oil.

According to the PRO the violation resulted in $3,459,826.89 of overcharges.

[FR Doc. 85-15428 Filed 6-26-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of May 6 Through May 10, 1985

During the week of May 6 through May 10, 1985, the decisions and orders summarized below were issued with respect to 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.

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.

Dated: June 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List

[No. 397]

May 10, 1985.

Request for Exception

Utex Oil Company, 05/08/85, HEE-0069

Utex Oil Company filed an Application for Exception from the provisions of 10 C.F.R. §§ 212.72 and 212.76 in which the firm sought retroactive exception relief from its restitutionary obligation resulting from its violation of the DOE crude oil price regulations. In considering the request, the DOE found that the firm would not have qualified for prospective exception relief had it filed its request at the appropriate time. In this regard, the DOE noted that consistent with *Phillips Petroleum Co.*, 2 DOE ¶ 81,112 (1978), prospective exception relief as an economic incentive to crude oil producers was appropriate only where the wells at issue were already a part of a firm's continuing operations and, therefore, the purchase price of the wells at issue was not an allowable investment. In addition, the DOE found that the firm would not experience severe financial hardship if required to make restitution and that the unintentional nature of a firm's violations is not a compelling reason for granting retroactive exception relief. Accordingly, the exception request was denied.

Motion for Discovery

MAPCO International Inc./*Economic Regulatory Administration*, 05/10/85, HRD-0193, HRD-0218, HRH-0193, *HRZ-0227*

MAPCO International Inc. filed Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that was issued to the firm. In its discovery motion, MAPCO sought discovery through interrogatories and production of documents of information pertaining (i) to the audit of the firm, (ii) the administrative record of certain rulemakings applicable to crude oil resellers, (iii) the DOE's contemporaneous construction of portions of the crude oil reseller regulations, and (iv) information concerning the prices charged by other crude oil resellers. In its Motion for Evidentiary Hearing, MAPCO sought to present evidence concerning the services that the firm performed.

The DOE granted discovery of audit workpapers concerning the calculation of revisions in the amount of overcharges alleged, but denied MAPCO's discovery motion in all other respects since they would not elicit evidence relevant and material to the issues raised in the firm's Statement of Objections. In this regard, the DOE found that (i) further discovery concerning the audit was not warranted since the firm would already have information in its own records relevant to whether the PRO contained erroneous findings of fact, (ii) no special situation existed in this case that would

warrant discovery pertaining to the rulemaking in addition to the official administrative records, (iii) the regulations were not sufficiently ambiguous to make contemporaneous construction discovery appropriate, and (iv) discovery concerning the prices charged by other crude oil resellers, which MAPCO sought in an attempt to demonstrate that it did not charge prices higher than its nearest comparable reseller, was inappropriate since the safe harbor provision required firms to identify their nearest comparable reseller contemporaneously, and MAPCO did not make a preliminary showing that it had made such a determination.

The Motion for Evidentiary Hearing was denied because MAPCO did not demonstrate that the evidence could not be submitted by documentary submissions. The DOE also granted a motion by the ERA to place certain documents under seal on the ground that public release of the information could cause competitive injury to other firms.

Implementation of Special Refund Procedures

Armour Oil Company, 5/09/85, HEF-0031

The DOE issued a Decision and Order establishing procedures for the disbursement of $52,885.52 (plus accrued interest) obtained as a result of a Consent Order entered into by the DOE and Armour Oil Company (Armour). The funds will be available to reseller customers who purchased motor gasoline, diesel fuel, fuel oil, or kerosene from Armour during the period May 1, 1974 through January 28, 1981. Applicants requesting refunds of $5,000 or less will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the amount they were allegedly overcharged by Armour.

Refund Applications

MAPCO, Inc./Texaco Refining & Marketing Inc., 05/07/85, RF108-0008

Texaco Refining & Marketing 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 MAPCO, Inc. The DOE determined that Texaco Refining's allocable share of the MAPCO consent order funds was equal to the $5,000 injury presumption threshold. Accordingly, the DOE determined that Texaco Refining would not be required to demonstrate injury, and that the firm would receive $5,000 plus $3,275 in interest.

Standard Oil Company (Indiana)/Ashland Oil, Inc., 05/08/85, RF21-11358, RF21-11359, RF21-11360

The DOE issued a Decision and Order concerning three Applications for Refund filed by Ashland Oil, Inc. Ashland sought refunds based on purchases it made as a reseller of Amoco middle distillates, a wholesaler of Amoco motor gasoline, and a reseller of Amoco heavy fuel oil. Ashland sought greater refunds with respect to its purchases than those subject to the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering Ashland's Applications, the DOE rejected the firm's unsupported claims that market conditions had prevented it from passing on Amoco price increases. The DOE also rejected Ashland's contention that the firm's large cumulative bank of unrecouped product costs demonstated that the firm had absorbed Amoco's alleged overcharges. The DOE concluded that Ashland should receive a refund calculated according to the presumption method for its purchase of Amoco motor gasoline and middle distillates and that the firm's claim based on purchases of heavy fuel oil should be denied. The refund granted in this proceeding totaled $153.

Standard Oil Company (Indiana)/Kristensen Standard Service, 05/07/85, RF21-12389

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of Amoco motor gasoline. The firm elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering the Application, the DOE concluded that the firm should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding totaled $1,269.

Standard Oil Company (Indiana)/Oklahoma, et al., 05/07/85, RQ21-163, et al.

The States of Oklahoma, Kansas and Iowa and the Ute Indian Tribes of Fort Duchesne, Utah filed proposed second-stage refund plans for funds remitted to the DOE under consent orders with Standard Oil Company (Indiana) (Amoco), Belridge Oil Company, Palo Pinto Oil and Gas and Nordstrom Oil Company. The OHA approved Oklahoma's proposed refund plan to use $105,014 allotted to it from the Amoco, Belride and Palo Pinto escrow accounts to fund a vehicle fleet management program for fleet operators and to expand its low-income weatherization assistance program. The disbursement of $100,943 from the Amoco, Belridge and Palo Pinto escrow accounts was approved for Kansas to use in a ridesharing program. The OHA denied Kansas' proposals to conduct an energy audit of public buildings and to strengthen its drunk driving program because the benefits of those proposals to injured consumers of motor gasoline and middle distillates were too indirect. The OHA also denied Kansas' request to use 40 percent of its allotted funds to establish an energy data base. The OHA approved $777,023 from the Amoco, Belridge and Nordstrom escrow accounts to Iowa for the funding of its low-income weatherization assistance and motor fuel inspection programs and for establishing a "match bank" to purchase buses and vans for injured consumers. Iowa's request to set aside $51,868 to pay for the services offered by a law firm in representing Iowa in these refund proceedings was denied. Iowa's energy management program for public buildings was also rejected since the benefits to injured consumers of motor gasoline and middle distillate products were too remote. Finally, the OHA approved $1,252 from the Amoco escrow account for use by the Ute Indian Tribe for insulating its vocational school building, since the building is used by most tribal members.

Tenneco Oil Company/E.P. Nisbet Company, Inc., et al., 05/08/85, RF7-112 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by wholesalers and retailers of Tenneco middle distillates. These firms applied for refunds based upon the presumption of injury and the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by each applicant, the DOE concluded that each claimant should receive refunds based on a volumetric per gallon refund amount. The refunds granted in this Decision totaled $5,774.

Tenneco Oil Company/H.O. Anderson, Inc., 05/09/85, RF7-124

The DOT issued a Decision and Order concernng an Application for Refund filed by H.O. Anderson, Inc., a retailer of Tenneco middle distillates and motor gasoline. Anderson applied for a refund for purchases of both Tenneco middle distillates and motor gasoline based upon the presumption of injury and the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by the firm, the DOE concluded that Anderson should receive a refund based on its purchases of motor gasoline during the period March 1973 through December 1976. It further concluded that the firm should receive a refund based upon its purchases of Tenneco middle distillates prior to July 1, 1976. It therefore calculated the firm's refund using the volumetric method and determined that a refund of $869 should be approved.

Tenneco Oil Company/Joel F. Hollowell Oil Company, Inc., 05/08/85, RF7-119

The Doe issued a Decision and Order concerning an Application for Refund filed by Joel F. Hollowell Oil Company, Inc. (JFH), a wholesaler of Tenneco middle distillates and motor gasoline. The firm elected to aply for a refund based upon the presumption of injury and the procedures outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by the firm, the DOE concluded that JFH should receive a refund of $509 based on a volumetric per gollon refund amount.

Tenneco Oil Company/Moore Oil Company, Inc., 05/09/85, RF7-115

The DOE issued a Decision and Order concerning an Application for Refund filed by Moore Oil Company, Inc., a retailer of Tenneco middle distillate and motor gasoline. Moore applied for a refund for purchases of both Tenneco middle distillate and motor gasoline based upon the presumption of injury and the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). After examining the evidence and supporting information submitted by the firm, the DOE concluded that Moore should receive a refund of $680 based on its purchases of motor gasoline. Because all of Moore's purchases of middle distillate were made after the products were

decontrolled, those purchases were not included in the DOE's refund calculations.

Tenneco Oil Company/Wiseman Oil Company, Inc., 05/08/85, RF7-118

The DOE issued a Decision and Order concerning an Application for Refund filed by Wiseman Oil Company, Inc., a retailer of Tenneco middle distillates. Wiseman applied for a refund based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82.538 (1982). After examining the evidence and suporting information submitted by the firm, the DOE concluded that Wiseman should receive a refund of $156 based on a volumetric per gallon refund amount.

Wallace and Wallace Fuel Oil Company/Al Jones Oil Company 05/10/85, RF69-0002

The DOE issued a Decision and Order concerning an Application for Refund filed by Al Jones Oil Company, a reseller of Wallace No. 2 fuel oil. Jones applied for a refund based upon the presumption of injury outlined in *Wallace & Wallace Fuel Oil Co.*, 12 DOE ¶ 85,122 (1984). After examining the evidence and supporting information submitted by the firm, the DOE concluded that Jones should receive a refund of $5,000 plus $3,595 in interest.

White Petroleum Company/Franklin Trucking, Inc., Lee Motor Lines, Inc., 05/09/85, RF80-1, RF80-2

The DOE issued a Decision and Order concerning an Application for Refund filed by two end-users of motor gasoline purchased from White Petroleum Company. The applicants purchased White covered products directly, and applied for refunds in accordance with White special refund procedures. *White Petroleum Co.*, 12 DOE ¶ 85,161 (1985). After examining the statements and supporting information submitted by the applicants, the DOE approved refunds totaling $957.

DISMISSALS

The following submissions were dismissed:

Name and Case No.

Empire Gas Corp., RF142-1, RF119-2, RF121-2, RF113-5
Hexcell Corp., RF76-151
Pettway Oil Company, HEE-0142
Powerine Oil Company, RF6-26
Tosco Corp., RF21-8766
TRW Systems, Inc., RF76-79

[FR Doc. 85-15429 Filed 6-26-85; 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 solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $204,625.14 obtained as the result of a consent order which the DOE entered into with Perta Oil Marketing Corporation, a reseller of crude oil and petroleum products located in Beverly Hills, California. The money is being held in escrow following the settlement of an enforcement proceeding brought by the DOE's Economic Regulatory Administration.

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-0148.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

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 Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $204,625.14 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Perta Oil Marketing Corporation. The funds were provided to the DOE by the firm to settle all claims and disputes between the firm and DOE regarding the manner in which it applied the federal price regulations with respect to its sales of crude oil and refined petroleum products durig the period from August 1, 1973, through january 28, 1981.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 10 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Perta or to submit a statement verifying that it purchased crude oil and/or petroleum products from Perta and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In the case of crude oil purchasers, two separate types of demonstrations will be required: one for purchases made before the November 1974 onset of the Entitlements Program, the other for the period during which that Program was in effect. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to sumit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

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. All comments received in these proceedings will be available for public inspection between 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 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Perta Oil Marketing Corporation.

Date of Filing: Octobr 13, 1983.

Case Number: HEF-0148.

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 an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

I. Background

Perta is a "reseller" of crude oil, residual fuel oil, and refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Beverly Hills, California. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum

Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that during the period from August 1, 1973, through January 27, 1981, Perta allegedly committed pricing violations amounting to $1,858,143.32 with respect to its sales of crude oil and refined petroleum products.

In order to settle all claims and disputes between Perta and the DOE regarding the firm's compliance with the DOE price regulations, Perta and the DOE entered into a consent order on July 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations actually occurred. The consent order also states that Perta does not admit that it violated the regulations.

Under the terms of the consent order, Perta agreed to make refunds amounting to $250,000 (including interest through June 30, 1981). Separate processes were established by which Perta would refund money to injured parties. First, $60,720, representing alleged overcharges on sales of fuel oil to Pacific Gas and Electric Co., was to be paid directly to the utility company. In addition, $189,280, representing alleged overcharges with respect to sales of crude oil and refined petroleum products to certain wholesale purchasers, was to be deposited by Perta into an interest-bearing escrow account for ultimate distribution by the DOE. Perta deposited this amount, plus interest of $15,345.14, on November 30, 1981. This Decision concerns the distribution of the $204,625.14 deposited by Perta, plus accrued interest since the date of deposit.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing 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 those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two states. In the first state, we will attempt to provide refunds to identifiable purchasers of crude oil and refined petroleum products who may have been injured by Perta's pricing practices during the period August 1, 1973, through January 27, 1981. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in 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 reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of the alleged overcharges to each.

In the DOE's audit of Perta, ERA identified 12 wholesale first purchasers as having allegedly been overcharged. While DOE audit files represent only preliminary determinations, and do not necessarily reflect actual overcharges or provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding, it is reasonable to use the information contained in the audit files for guidance. *See Armstrong and 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 at the funds in the escrow account be apportioned among the customers identified by the Audit and/or their downstream customers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶85,024 (1984); *Richards Oil Co.*, 12 DOE ¶85,150 (1984). The first purchasers identified by the audit, along with the share of the settlement allotted to each ERA, are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also consider whether the first purchasers suffered injury or were able to pass through the alleged overcharges. In order to do this, we will first examine the specific allegations made by ERA.

B. Crude Oil Pricing

ERA's first allegation was that Perta had overcharged certain of its customers on their purchases of crude oil. Some of the alleged violations occurred before the Entitlements Program, 10 CFR 211.67, went into effect in November 1974. The remainder of the alleged crude oil price violations occurred while the Entitlements Program was in effect. These two periods must be treated differently.

Before the inception of the Entitlements Program, a company purchasing crude oil would have treated the alleged overcharges as increased product costs. If it was unable to pass through these increased costs, it might have been injured. To obtain a refund based on crude oil purchases made from Perta before November 1974, a claimant must show that it maintained a bank of unrecouped increased product costs during this period and must also show that market conditions would not permit it to pass through those costs.[2] *See Office of Enforcement*, 9 DOE ¶82,521 at 85,137 (1982) (*Alkek*) *and Office of Enforcement*, 9 DOE ¶82,553 at 85,291 (1982) (*Adams*).

The advent of the Entitlements Program in November 1974 dramatically changed the nature of the oil industry. Under the program, refiners who were able to obtain less expensive price-controlled crude oil made payments to refiners who had to use more expensive foreign, or uncontrolled domestic, crude oil. Refiners who had to make payments would purchase "entitlements"; those who were receiving money would sell entitlements. The price of an entitlement was primarily determined by the difference between the price of uncontrolled oil and the price of controlled oil. As a result, an increase in the price of uncontrolled imported crude oil, such as that sold by Perta, could lead to an increase in the cost of an entitlement. Due to the operation of the Entitlements program, this price increase would be shared by all purchasers of crude oil and their customers. In order to determine who

[1] As of May 31, 1985, the escrow account contained $291,495.02, including accrued interest.

[2] ARCO Petroleum Products Company and Pacific Resources, Inc. made the only purchases of crude oil before November 1974 with respect to which ERA alleged overcharges.

was actually injured by the alleged overcharges and thus entitled to a refund, a careful analysis of the petroleum industry's chain of distribution is required.

We have previously considered the proper disbursement of consent order funds related to alleged crude oil pricing violations which affected the Entitlements Program. *See Alkek, op. cit.; Adams, op. cit.; A. Johnson & Co.* 12 DOE ¶85,102 (1984) (*Johnson*). Since the effects of Perta's alleged overcharges would have been spread throughout the petroleum industry in a manner similar to the alleged overcharges involved in the *Alkek, Adams,* and *Johnson* proceedings, we propose to use procedures for accepting this type of first-stage application which are identical of the procedures established in those proceedings. We also propose to distribute the Perta consent order funds attributable to alleged crude oil overcharges after November 1974 in the manner ultimately decided upon in the *Alkek, Adams,* and *Johnson* proceedings.[3] Parties who have filed claims in those proceedings and who have not yet received a decision on those claims will be deemed to have filed similar applications in this proceeding.

C. Credit Terms

The second violation allegedly committed by Perta involves credit terms. ERA maintained that Perta improperly changed the credit terms which it extended to its customers, thus increasing their interest costs. *See* 10 CFR 212.10(a); Ruling 1974–10, 39 Fed. Reg. 15,140 (1974). This alleged violation would have affected refiners and resellers differently. Refiners were allowed to bank increased non-product costs. *See* 10 CFR § 212.83(e)(4) and (7); *See also Standard Oil Co.* v. *DOE,* 596 F.2d 1029 (Temp. Emer. Ct. App. 1978). Thus, if a refiner could not pass along all increased costs, such as interest, at the time the costs were incurred, the refiner could "bank" the increased costs for recovery at a later date. We therefore propose that refiners who experienced increased interest costs be required to demonstrate that they absorbed those increased costs. While there are a variety of methods by which a firm could make such a showing, a refiner claimant should generally show that it continuously maintained a bank of unrecovered increased non-product costs during the entire period in which overcharges were alleged and that market conditions would not permit it to pass through the cost increases.

Resellers faced a different situation; they could not bank increased non-product costs. *See generally* 10 CFR 212.93. Thus, if they were unable to pass through increased interest costs, they would have had to absorb them and thus would have suffered injury. Since there does not appear to be a way for resellers to show directly that they were injured, we propose that they be permitted to make an indirect showing. We propose two methods by which a reseller can make such a demonstration; other methods might also be acceptable. First, since resellers were permitted to recover non-product cost increases only after all increased product costs had been recovered, *see* Ruling 1975–16, 40 FR 40,834 (1975); *Reinauer Petroleum Co.*, 12 DOE ¶ 83,016 at 86,212–13 (1984), a firm which was unable to pass through alla of its increased product costs would have had to absorb all of its increased non-product costs, including interest expenses. Thus, a reseller which shows that it was banking increased product costs at the time the overcharges were alleged to have occurred will be deemed to have demonstrated injury. Alternatively, a reseller may show that it had incurred non-product cost increases, but was unable to recover all of those cost due to market conditions. If this happened, then a firm would have been absorbing cost increases even if it could legally have passed those costs through. Under these circumstances, the firm would have had to absorb some of its increased non-product costs, including interest. Showing that either of these situations existed will be sufficient for a reseller to demonstrate injury and thus receive a refund. Claimants may, of course, suggest their own methods of demonstrating injury.

D. Fuel Oil Pricing

ERA's final allegation was that Perta overcharged certain firms which purchased fuel oil. We propose that firms which were allegedly overcharged on fuel oil purchases (*see* Appendix) receive refunds if they can demonstrate that they were injured by the alleged overcharges. While there are a variety of methods by which a claimant can make such a showing, a firm is generally required to demonstrate that it maintained a bank of unrecovered costs and that market conditions did not permit it to pass through those increased costs. If a firm did pass these costs through, downstream purchasers could be eligible for refunds.

E. Presumptions

To help ensure an equitable distribution of the escrow funds, we will adopt certain presumptions. Presumptions in refund cases are specifically authorized by the 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 and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring expenses out of proportion to potential refunds and to enable OHA to consider refund applications in the most efficient way possible in view of the limited resources available. As in previous special refund proceedings, we intend to adopt rebuttable presumptions that certain claimants seeking small refunds were injured by Perta's alleged pricing practices and that spot purchasers were not. In addition, we are making a proposed finding that end users suffered injury.

The presumption that claimants seeking small refunds were injured is based on a number of considerations. Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This small-claims presumption eliminates the need for a claimant to submit and for OHA to analyze detailed proof of what happened downstream of the initial impact. This presumption will apply to refund claims based on alleged fuel oil pricing violations and alleged credit terms violations, but not to claims based on alleged crude oil pricing violations.

[3] Of the consent order funds, $69,802.04 is attributable to alleged overcharges on sales of crude oil by Perta. Of this amount, $67,779.97 is attributable to sales made after November 1974.

Under the presumption we propose to adopt, an applicant claiming a refund based on either purchases of fuel oil or injuries suffered due to Perta's altering of credit terms will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on alleged overcharges below a certain level. Previous OHA refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. 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. We believe that the same approach should be followed in this case.

The specific value chosen for the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is influenced by several factors. One of these 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 refund amount is fairly low, and the early months of the consent order period are remote, $5,000 is a reasonable value for the threshold.[4] *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶85,226 (1984) (*Conoco*), and cases cited therein.

If a firm made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. 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 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.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that Fletcher Oil Company and Venture Trading made only spot purchases from Perta. We propose that these firms not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of crude oil and fuel oil, respectively, from Perta during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We propose that direct and downstream purchasers who were end users of Perta products be required to document only their purchases from Perta or a first purchaser.[5] First purchasers who were end users need document only their purchase volumes from Perta. We will allocate refunds to downstream purchasers based on the information submitted by the first purchaser and/or the information in the audit file. We will base the amount of these refunds on the ratio of the volume purchased by a downstream purchaser from a first purchaser to the total volume purchased by the first purchaser from Perta.[6]

In addition, we proposed that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Perta's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244, (1982) *(Pennzoil)*. Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for smaller amounts outweights the benefits of restitution. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

We also recognize that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Perta's pricing practices during the audit period and would therefore be entitled to a portion of the consent order funds. If 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.[7]

Refunds will be authorized for firms listed in the Appendix provided they make the requisite showing of injury for their type of business.[8] In order to receive a refund, each claimant will be required to submit either a schedule of its monthly purchases from Perta or a statement verifying that it purchased crude oil or refined petroleum products from Perta and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audit will be

[4] Refiners and resellers who claim a refund in excess of $5,000, but who cannot establish that they did not pass through the price increases, will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Refiners and resellers potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid incurring the expense of proving greater injury. *See* Vickers, 8 DOE at 86,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,125 (1982) (Ada).

[5] The end-user finding supersedes the spot-purchaser presumption.

[6] Since the consent order provided for a direct payment to Pacific Gas and Electric Co., that firm is not eligible for a refund as a first purchaser. The utility may, however, receive a further refund as a downstream purchaser from one of the firms listed in the Appendix.

[7] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

[8] The share of the escrow fund allocated to each firm listed in the Appendix represents 13.5 percent of the amount each firm was allegedly overcharged. This is consistent with the terms of the consent order, which settled for 13.5 percent of the total amount of overcharges alleged in the audit.

required to provide specific information concerning the date, place, price, 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 to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

F. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual 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 of this refund procedure has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Order That:

The refund amount remitted to the Department of Energy by Perta Oil Marketing Corporation pursuant to the consent order executed on July 1, 1981, will be distributed to accordance with the foregoing decision.

APPENDIX

First purchaser	Share of settlement*	Product purchased and Type of Violation Alleged**	Settlement share breakdown
Amorient Petroleum, 1920 Luggarway, Long Beach, California 90813	$4,135.47	Crude Oil—Price (1)	$2,901.35
		Fuel Oil-Credit	1,234.12
ARCO Petroleum Products Co., 515 South Flower Street, Los Angeles, California 90071	7,085.14	Crude Oil—Price (2)	907.72
		Crude Oil—Price (1)	989.29
		Napahtha—Credit	5,188.13
Coastal States Marketing, Inc., 9 Greenway Plaza, Houston, Texas 77046	12,912.05	Crude Oil—Price (1)	
Commonwealth Oil and Refining Co., Inc., 8626 Tesoro Drive, San Antonio, Texas 78217	1,196.65	Naphtha—Credit	
EDG, Inc., 2400 East Artesia Boulevard, Long Beach, California 90805	125,876.18	Fuel Oil—Price	97,208.30
		Fuel Oil—Credit	28,167.88
Fletcher Oil Company, 24721 South Main Street, Carson, California 90744	8,980.18	Crude Oil—Price (1)	
Pacific Resources, Inc., P.O. Box 3379, Honolulu, Hawaii 96842	4,614.30	Crude Oil—Price (2)	1,114.35
		Crude Oil—Price (1)	3,500.95
Pectan Trading, c/o Shell Oil Company, P.O. Box 2099, Houston, Texas 77001	6,006.97	Crude Oil—Price (1)	
Shell Oil Company, P.O. Box 2099, Houston, Texas 77001	17,948.49	Crude Oil—Price (1)	
Sun Shipping and Trading, 888 West Sixth Street, Los Angeles, California 90017	14,063.07	Crude Oil—Price (1)	
Texaco, Inc., P.O. Box 52332, Houston, Texas 77052	478.62	Crude Oil—Price (1)	
Venture Trading, 9701 Wilshire Boulevard, Beverly Hills, California 90212	1,328.02	Fuel Oil—Credit	

* Not including interest accrued since November 30, 1981.
** A firm may have purchased additional products. Violations were alleged only on those listed.
(1) Relates to purchases made after November 1974. *See* text for explantion.
(2) Relates to purchases made before November 1974. A refund claim may be submitted for this amount. *See* text.

[FR Doc. 85-15430 Filed 6-26-85; 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 and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $568,000 in court-ordered settlement funds to members of the public. This money is being held in escrow following the settlement of litigation involving Juniper Petroleum Corporation and the Department of Energy.

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 numbers HEF-0579.

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 Proposed Decision and Order set out below. The Proposed Decision relates to funds resulting from the judgment of the United States District Court for the District of Delaware in litigation between Juniper Petroleum Corporation and DOE. In that litigation, Juniper challenged the DOE regulations governing the sale of crude oil produced from "stripper well properties" during the period of federal price controls.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by the firms Juniper pursuant to the court order. The DOE has tentatively established procedures under which purchasers of Juniper crude oil may file claims for refunds from the escrow fund. 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: May 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Juniper Petroleum Corporation.

Date of Filing: April 12, 1985.

Case Number: HEF–0579.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a court order involving Juniper Petroleum Corporation. Pursuant to this order, the firm was required to make refunds totaling approximately $568,000 in principal and interest for actual violations of the DOE pricing and certification regulations. Those funds are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

Background

In 1980, Juniper filed a lawsuit against the Department of Energy challenging the DOE regulations governing the sale of crude oil produced from "stripper well properties." *Juniper Petroleum Corporation v. Department of Energy*, No. 80–617 (D. Del.).[1] Juniper's suit was stayed pending the outcome of related multidistrict litigation challenging the stripper well regulations. However, when the Temporary Emergency Court of Appeals upheld the stripper well regulations, *The Department of Energy Stripper Well Exemption Litigation*, 690 F.2d 1375 (Temp. Emer. Ct. App. 1982), *cert. denied*, 103 S. Ct. 763 (1983), the United States District Court for the District of Delaware determined that judgment should be entered for the DOE in the *Juniper* proceeding. It therefore ordered that Juniper pay to the Department of Energy for distribution in Subpart V proceedings the total amount in dispute plus all accrued interest on that amount. This meant that Juniper had to pay DOE an amount equal to the difference between the ceiling price for "old" oil and the stripper well price for each barrel of crude oil subject to the lawsuit, plus interest on that amount.

Juniper, like other producers of crude oil, was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The DOE regulations, in effect until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil.[2] The regulations also permitted producers to sell certain other classifications of crude oil, such as crude oil producer from a "stripper well property" or other exempt property, at world market levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled and exempt domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). When they processed the crude oil, refiners were required to report these certifications to the DOE and its predecessors to enable the agency to administer the Entitlements Program, 10 CFR 211.67.[3]

Because the Federal regulations governing the price of crude oil created a price disparity between price-controlled and uncontrolled crude oil, those refiners having greater access to price-controlled oil were in a favorable competitive position. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many firms with scant access to price-controlled domestic reserves experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances in the industry resulting from inequities of access to price-controlled crude oil, the DOE established the Entitlements Program. 39 Fed. Reg. 31650 (1974); 39 Fed. Reg. 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. By utilizing this mechanism, the DOE sought to distribute equally throughout the industry and petroleum-consuming public the financial benefits associated with access to price-controlled crude oil.

The general effect of miscertifications of crude oil (i.e. certifying price-controlled crude oil as stripper well crude oil) on the Entitlements Program has been noted and discussed at length by the Temporary Emergency Court of Appeals and by the DOE in several previous decisions. *See, e.g., Union Oil Company* v. *Enforcement*, 9 DOE ¶ 82,533 (1982) (hereinafter cited as *Adams*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*); *Getty Oil Company*, 1 DOE ¶ 80,102 (1977). In *Alkek*, for example, we stated that:

> Because of the manner in which the Entitlements Program operated, the effects of the miscertifications were spread among all domestic refiners. Miscertifications caused price-controlled crude oil to disappear. This disappearance caused the volume of old oil to be distributed through the Entitlements Program to decline and caused the DOSR [National Domestic Crude Oil Supply Ratio] to be reduced. Thus, refiners who included more than the national average percentage of price-controlled crude oil in their crude oil receipts and runs to stills had to purchase a *greater* number of entitlements. Similarly, refiners with less than the national average percentage of price-controlled crude oil had *fewer* entitlements to sell. As a result, every refiners cost of crude oil was increased. Thus, all refiners were affected by the alleged miscertification violations involved in the Consent Order.

Alkek at 85,133 (citations omitted). Because miscertifications caused a reduction in the DOSR, the operation of the Entitlements Program effectively dispersed the effects of crude oil miscertifications to all participants in the program so that direct purchasers of miscertified oil were not likely to have

[1] The court granted the firm's request that it be permitted to deposit into an escrow account an amount representing the difference in value between stripper well crude oil prices and the maximum lawful price for "old" crude oil.

[2] Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, i.e., the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–.74. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b).

[3] The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products.

sustained an injury different from that of other refiners. A refiner which purchased and paid an increased amount for miscertified crude oil received additional entitlements. These additional entitlements were then sold to recoup the difference between the higher price paid for the miscertified crude oil and the old oil price. By thus shifting the impact of miscertifications from direct purchasers of miscertified crude oil to all participants in the Entitlements Program, the post-entitlements acquisition cost of crude oil increased by the same amount per barrel for every domestic refiner.

Because of the operation of the Entitlements Programs, Juniper's miscertification of "old" crude oil as stripper well crude oil affected all refiners at least to a marginal extent by spreading the impact of miscertifications to all participants in the Entitlements Program. As we have previously noted, when miscertifications occurred, the marginal and average costs of crude oil increased for all domestic refiners. *See Adams* at 85,293. It is probable that over the long run at least some part of these cost increases were passed through to the consuming public in the form of higher prices,[4] but we are unable to determine at the present what portion of price increases refiners as a class, or individual refiners, were likely to have absorbed, or whether they absorbed any price increases at all. We are considering similar issues in the *Stripper Well Exemption Litigation* proceeding. See 12 DOE ¶ 85,017 (1984). Because those matters are currently under active consideration, this is neither an appropriate time nor place for speculating on the exact degree to which refiners as a class may have been injured by reseller pricing practice. However, we anticipate adopting a method of granting refunds in the consolidated *Alkek-Adams* proceeding which is consistent with that which OHA ultimately recommends to the District Court in the Stripper Well Exemption Litigation. As indicated below, because the Juniper crude oil miscertifications had the same effects, we will follow the same procedure in this case.

Jurisdiction

The procedural regulations of the Department of Energy 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.[5] Those regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by adjudicated violations or to readily ascertain the amount of their alleged injuries. 10 CFR § 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981). After reviewing the record developed in this proceeding, we have concluded that, although it may be possible to ascertain the identify of the first purchasers of Juniper's crude oil, it likely would be difficult to identify other potentially injured parties and to determine to what extent a refund applicant may have been injured by the firm's certification practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of hearings and Appeals therefore will accept jurisdiction over the funds which Juniper paid to the DOE in connection with litigation underlying the Petition for Implementation of Special Refund Proceedings.

Proposed Refund Procedures

We have previously established refund procedures for consent orders involving crude oil miscertifications violations like those in the present proceeding. In *Alkek* and *Adams*, which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations.[6] *See also A. Johnson & Co., Inc.*, 12 DOE ¶85,102 (1984), 49 FR 44541 (November 7, 1984) (establishing refund procedures like those in *Alkek* and *Adams* for funds obtained from 194 firms) (hereinafter cited as *A. Johnson*). Because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek*, *Adams* and *A. Johnson* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations. Parties who have filed claims in the *Alkek* and *Adams* proceedings, but have not received a decision on those claims, will be deemed to have filed similar applications in the proceeding.

Because of the difficulty inherent in establishing the level of injury to parties in the present case, there may be a portion of the refund moneys remaining after all successful first-stage claimants have been paid. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶82,508 (1982). Our preliminary views concerning possible second-state resolutions are contained in *In Re Stripper Well Exemption Litigation*, Case No. HEF-0025, 48 Fed. Reg. 57608 (1983).

It Is Therefore Ordered That:

The refund amount provided in conjunction with the court's order in *Juniper Petroleum Corporation v. DOE*, Civil Action No. 80-617 (D. Del.) shall be distributed in the manner set forth in the foregoing Decision.

[FR Doc. 85-15431 Filed 6-26-85; 8:45 am]

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[4] We posited in the *Stripper Well* proceeding, 12 DOE ¶ 90,501 (1984) that these cost increases were treated by refiners exactly like other crude oil cost increases. To the extent they could increase their prices for refined petroleum products to reflect these cost increases, refiners were able to shift the effects of these cost increases to their customers. As a result, refiners were in a position to shift the effects of the alleged regulatory violations from themselves to their customers. Tenneco Oil Company/Plateau, Inc., 10 DOE ¶ 85,015 (1982). If these cost increases were entirely passed through by a refiner, it incurred no injury as a result of miscertifications of crude oil. If the passthrough were less than complete, that refiner would likely have incurred some injury.

[5] At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

[6] We subsequently added to the *Alkek/Adams* "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF-0025, 48 FR 57608 (1983).

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 filing Applications for Refund from funds obtained from Allied Materials Corporation in settlement of all issues regarding Allied's application of the federal petroleum price and allocation regulations.

DATE AND ADDRESS: Applications for refund must be postmarked by September 25, 1985, should conspicuously display a reference to case number HEF-0200, 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: Geoffrey D. Stein, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

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 forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between Allied Materials Corporation and Excel Corporation (cited collectively as Allied) and the DOE. The consent order settled all disputes between the DOE and Allied concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period September 1, 1973 through January 27, 1981.

Any members of the public who believe that they are entitled to a refunds in this proceeding may file Applications for Refund. All Applications should be postmarked by September 26, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refund 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 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: Allied Materials Corporation and Excel Corporation.

Date of Filing: October 13, 1983.

Case Number: HEF-0200.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of an enforcement proceeding involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Allied Materials Corporation and Excel Corporation (hereinafter cited collectively as Allied).[1] Under the terms of the consent order, Allied agreed to remit $848,232.46 to the DOE in settlement of all civil and administrative claims by the DOE relating to Allied's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period form September 1, 1973 through January 27, 1981 (the consent order period).

I. Background

Allied is a "refiner" of petroleum products, and its subsidiary, Excel Corporation, a "reseller" and "retailer" as those terms were defined in 10 CFR 212.31. During the consent order period, Allied was engaged in the refining, reselling, and retailing of products covered by the federal petroleum price and allocation regulations set forth in 10 CFR Part 212. The ERA conducted an audit to determine Allied's compliance with these regulations. During the course of this audit, Allied and the DOE entered into a proposed consent order, whereby Allied agreed to refund $1.5 million to resolve all issues involving its compliance with the regulations during the consent order period. Allied agreed to pay a total of $651,767.54 to 30 direct purchasers which were ultimate consumers of its refined petroleum products. These customers are listed in the Appendix to this Decision. The firm was to remit the remaining $848,232.46 to the DOE for distribution to other Allied customers who were not ultimate consumers. Notice of the proposed consent order was published for public comment at 47 FR 11057 (1982). The proposed consent order was adopted without modification as a final order of the DOE on June 10, 1982. 47 FR 25177 (1982).

On February 12, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Allied consent order funds that had been deposited with the DOE. 50 FR 7634 (February 25, 1985). In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of covered products who may have been injured by Allied's pricing practices during the consent order period. This decision adopts this mechanism and describes the information that purchasers of Allied petrolemu products should submit in order to demonstrate eligibility for a portion of the consent order funds. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Ten states, the Allied Marketers and the Jobbers' Group filed comments in response to the PD&O. These comments are discussed in the following presentation of the procedures we are adopting. In addition, each of the ten states commented on the distribution of residual funds in a second-stage proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the

[1] Allied Materials Corporation acquired all outstanding stock of Excel Corporation in 1977, and the two firms subsequently merged. The consent order pertains to sales of covered products by both firms, both before and after the merger.

authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

During the first stage in the refund process, funds from the Allied consent order will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by alleged overcharges in Allied's sales of covered products. As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Allied during the consent order period. We will therefore calculate refunds based on a per-gallon, volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

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 to be adopted in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons of covered products it bought from Allied during the consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the $848,232.46 consent order fund by the total number of gallons sold by Allied during the consent order period. Based on information obtained from the Allied audit files, we estimate that Allied sold 126,163,385 gallons of covered products during the consent order period. This figure results in a volumetric refund amount of $.006723 per gallon. In addition, the interest which has accrued to the consent order funds will be applied to each paid refund on a pro rata basis.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of products marketed by Allied. 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. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Allied's pricing practices during the consent order period. Any such purchaser may file a refund application requesting an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact on it of the alleged overcharges. *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.

In the PD&O, we tentatively determined that resellers and retailers seeking refunds totalling $5,000 or less under the volumetric presumption would not be required to demonstrate further any injury resulting from the alleged overcharges. The State of Texas filed comments opposing adoption of this presumption. Texas argues that the OHA would unjustly enrich small claimants by not requiring a showing of injury of all refund applicants, and contends that first-stage refunds should be paid only to those parties who can prove that they did not pass on the alleged overcharges, regardless of the amount of the claim. We have considered this comment but remain convinced that the small-claims presumption is sound.

The adoption of a presumption of injury for smaller claims is based on a number of important considerations. First, because of the complexity of the pricing issues involved and the amount of time elapsed since the alleged overcharges took place, attempts at restitution to deserving parties necessarily will be inexact. *See Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F.2d 717, 722–23 (TECA 1982). Based on our experience in similar refund proceedings, however, we believe that the presumption of injury enables parties who likely were injured to claim refunds. We note that in past refund proceedings the OHA has analyzed extensively the issue of cost absorption by smaller purchasers of petroleum products. *See, e.g., Economic Regulatory Administration: In the Matter of Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048 (1982) (*Amoco*) at 88,205–209. We have found that in cases of alleged overcharges by refiners such as Allied, retailers were probably injured to some degree in that they were unable to pass along all cost increases to their customers. *Amoco* at 88,206. We cannot expect individual purchasers to be capable of producing similar findings, since our analysis was complex and involved data from many different sources. Along with these factors, we must also consider the concerns raised in the PD&O regarding the cost to each firm of gathering all the information necessary to prove injury and the cost to the OHA of analyzing it. In view of the conclusion that smaller claimants bore some impact of the alleged overcharges, and the fact that failure to allow simplified application procedures for small claims would deprive injured parties of an opportunity to receive refunds, we conclude that the small claims presumption should be adopted.

Under the small claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Previous OHA refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. 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 early months of the consent order period are many years past and the cost of compiling sufficient data is probably quite high, $5,000 is a reasonable value for the threshold. *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.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to

pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Company*, 13 DOE ¶ ———, No. HEF-0213 (May 17, 1985). We emphasize that the burden of proving the existence of cost banks rests with the claimant, regardless of what information is submitted.[2]

The Allied Marketers and the Jobbers' Group filed consolidated comments which suggest that the OHA ease the burden on firms seeking refunds greater than $5,000. In particular, the comments take issue with previous statements of the OHA in other proceedings concerning the expense of compiling cost bank data to demonstrate injury from alleged overcharges. *See, e.g., Bayou State Oil Corporation*, 12 DOE ¶85,197 (1985) (*Bayou State*) at 88,625 n.4. The commenters claim that the OHA "grossly underestimates" the expense and effort involved in tabulating data from numerous invoices to arrive at a complete calculation of unrecouped cost increases. The commenters contend that this expense exceeds $20,000 for a mid-sized firm. Further, the commenters note that many firms no longer possess the source data necessary to make such calculations.

We are not convinced that previous OHA refund procedures have underestimated the cost of the required showing of injury for firms claiming refunds over $5,000. The commenters have not presented any specific evidence of the expense faced by firms in assembling the necessary evidence, other than mentioning the need for some firms to construct a complete cost bank schedule from purchase and sales invoices. We note that firms were required under the regulations to compile contemporaneously information from which cost banks could be readily calculated, and if this data is still available, calculation of cost banks should be a relatively easy task. *See* 10 CFR 210.92 *and* 212.93(a). Furthermore, as stated above, there are alternative methods by which a firm may attempt to demonstrate injury when there are specific circumstances why an actual, contemporaneous record of cost banks is difficult or impossible to produce. *See Husky Oil Company*, 13 DOE ¶ ———, No. HEF-0213, slip op., at 7, (May 17, 1985); *Bayou State*, 12 DOE at 88,622-23. We believe that the procedures we have outlined minimize the expense to potential claimants while insuring that deserving parties receive proper refunds. Consequently, we will adopt the proposed procedures regarding the standards for evaluating larger refund claims.

We believe that most, if not all, of the ultimate consumers who purchased petroleum products directly from Allied have already received refunds for the alleged overcharges. The consent order stipulated the refund procedures for these customers. *See* Appendix. These customers therefore will not be eligible to apply for further refunds from the consent order fund deposited with the DOE. However, other ultimate consumers who purchased Allied products from resellers may be eligible to apply for refunds. We find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the 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 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 increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this 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 downstream, end-user purchasers of Allied petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applicants who are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Allied's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from Allied to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we find that there is a class of potential claimants who may be presumed to have suffered no injury from Allied's alleged overcharges. Those parties are firms that made spot purchases of Allied petroleum products.[3] *See Office of Special Counsel*, 10 DOE ¶85,048 (1982); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers:*

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the alleged overcharges will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 without having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396.

[3] We will except from this principle cooperative organizations which made spot purchases of products from Allied and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate customers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of Allied products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we will establish a rebuttable presumption that spot purchasers were not injured by Allied's pricing practices. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to Allied.

The consolidated comments of the Allied Marketers and the Jobbers' Group suggest that claimants be required to submit purchase volumes on a quarterly, rather than monthly, basis. The commenters contend that requiring only quarterly data is "far less intimidating" to potential claimants. Although in several previous cases we have only required purchase volumes by quarter, *e.g., Office fo Special Counsel: In the Matter of Tenneco Oil Company*, 9 DOE ¶82,538 (1982) at 85,210, it is our general practice to require a list of purchase volumes by month. *See Amoco* at 88,221; *Bayou State* at 88,624. We believe that monthly schedules provide a more precise picture of a firm's purchases and allow the OHA to chart accurately the seasonal cycle of petroleum purchases. In past refund proceedings, monthly volume figures have been essential in uncovering inaccurate purchase schedules. *See Illinois Gasoline Dealers Association*, 12 DOE ¶82,533 (1984) at 85,150. Monthly data also permits direct comparison between firms in case the need arises to examine purchasing patterns of Allied purchasers as a group. Because of differing fiscal years, however, quarterly data would likely not allow this type of direct comparison. In addition, monthly schedules will help us to more accurately compute the proper refund to a claimant who purchased Allied products which were decontrolled at some point during the consent order period. Finally, since our experience shows that most firms complied with the recordkeeping regulations by compiling monthly records of purchases, costs, etc., we do not believe that requiring monthly figures will be an additional cost burden on potential refund applicants. We share the commenters' interest in simplifying the refund process and agree that requiring only quarterly data might help to meet this goal. However, so that the OHA possesses the most accurate available data, we have determined that claimants in this proceeding should submit monthly schedules showing purchases of covered products from Allied. A claimant may submit quarterly purchase schedules, however, provided that it explaints specifically why monthly data is unavailable.

The consolidated comments also suggest that the OHA require that information regarding the continuity of ownership of the claimant firm during and since the consent order period be included in refund applications submitted in the Allied proceeding. This requirement is standard practice in Subpart V refund proceedings and it was not intended to be excluded from the PD&O. *See Apco Oil Corporation*, 12 DOE ¶85,149 (1985); *Standard Oil Company (Indiana)/Amcorp Oil Company*, 13 DOE ¶———, (Nos. RF21–8174 *et al.*) (June 4, 1985). We will require claimants to submit information regarding continuity of ownership, as outlined in Section III, below.

As in previous cases, we will set a minimum refund amount to potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Amoco* at 88,214. We will utilize the same minimum refund amount in the present case.

III. Applications for Refund

After considering the comments received concerning the first-stage refund procedures tentatively adopted in the February 12, 1985 PD&O, we have concluded that the proposed procedures should be implemented, as outlined above. We shall now accept applications for refunds from parties who purchased covered products from Allied during the consent order period.

In order to receive a refund, each claimant must provide a monthly schedule of its volume of purchases from Allied during the consent order period. If no documentation of the number of gallons purchased is available, a claimant must submit a detailed estimate of its purchases. Each claimant must indicate its level in Allied's chain of distribution, *e.g.*, ultimate consumer, reseller, etc. Each applicant must also state whether there has been a change in ownership of the firm during or 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. If a reseller or retailer claims a refund in excess of $5,000, it must demonstrate that it was injured by Allied's pricing practices by submitting the types of information outlined in Section II of this Decision.

All applications must be filed in duplicate and must be received within 90 days of publication of this Decision and Order in the **Federal Register**. 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 confidential information 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 provide the name and telephone number of a person who may be contacted by the OHA for additional information concerning the application.

Applications should refer to Case Number HEF–0200 and should be sent to: Allied Materials Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Allied Materials Corporation pursuant to the consent order executed on January 25, 1982, 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**.

Dated: June 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

The following 30 ultimate consumers of Allied petroleum products received refunds directly from Allied as a result of the consent order. These firms will not be eligible to apply for additional refunds in the present proceeding.

St. Louis—San Francisco R.R. (Burlington)
Amis Construction Company
Arkhola Sand and Gravel
Arrowhead Asphalt, Inc.
C & J Trucks, Inc.
Cummings Construction Company
Evergreen Mills
Hodges Trucking Company
J & M Leasing
Leeway Motor Freight
M & W Propane
Missouri Public Service Company
Mistletoe Express
Ralston Purina—Lancaster, Ohio
Ralston Purina—Louisville, Kentucky
Ralston Purina—Madisonville, Texas
Ralston Purina—Memphis, Tennessee
Ralsfon Purina—Union City, Georgia
Ralston Purina—Zellwood, Florida
Shawnee Paving Company
Southwestern Bell Telephone

Time D.C.
Trojan Transport
Tulia Power and Light
Breeding, Hugh
International Harvester
Quapaw Company
Defense Fuel Supply Center
St. Clair Lime
L & M Construction Company

[FR Doc. 85-15432 Filed 6-26-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AAA-FRL-2855-7]

EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of June 21, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: June 17, 1985.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED, AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To—	Grounds
A.C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007-00	D	4-12-84	4-11-87	§ 32.200 (a), (c), (i).
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	6-17-83	6-16-86	§ 32.200 (a), (b), (e), (f).
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-06	D	8-02-83	8-01-83	§ 32.200 (a).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	S	12-02-83	Open	§ 32.300 (b).
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	4-12-84	4-11-87	§ 32.200 (a), (c), (i).
Bowe, Walsh and Associates, Inc. (Melville, NY)	83-0040-00	D	4-14-83	4-13-86	§ 32.200 (a), (e).
Boyette, Willie Eugene (Wilson, NC)	83-0044-01	D	4-15-85	4-14-87	§ 32.200 (a).
Croft, William A. (Madison, WI)	83-0047-01	D	8-20-84	8-19-874-14-87	§ 32.200 (a).
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	4-30-85	4-29-88	§ 32.200 (a).
Dellinger, Theodore C. (Monroe, NC)	83-0012-01	VE	3-13-85	3-11-88	§ 32.200 (a).
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	4-14-83	4-13-86	§ 32.200 (a), (b).
Gabey, Martin (Northport, NY)	83-0040-02	D	12-16-83	12-15-86	§ 32.200 (a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	4-12-84	4-11-87	§ 32.200 (c), (i).
Harry Johnson Plumbing Company, Inc. (Walla Walla, WA)	83-0060-00	D	7-22-83	7-21-86	§ 32.200 (b), (c), (e), (i).
Herbert G. Whyte, Associates, Inc. (Gary IN)	83-0501	D	10-20-82	10-19-85	§ 32.200 (b), (e).
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-84	10-10-87	§ 32.200 (a).
Hunter, James C. (Gardena, CA)	83-0002-02	D	7-07-83	7-06-86	§ 32.200 (a).
Insulation Speciality and Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200 (c), (i).
Jackson, Manly (San Jose, CA)	83-0048-02	D	6-27-83	6-26-86	§ 32.200 (a).
Jackson, Mark (Walla Walla, WA)	83-0060-01	D	7-22-83	7-21-86	§ 32.200 (b), (c), (e), (i).
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	4-12-84	4-11-87	§ 32.200 (c), (i).
Krueger, Joseph (Cleveland, OH)	83-0025-01	D	10-04-84	10-03-87	§ 32.200 (c), (i).
L.A. Reynolds Company (Winston Salem, NC)	83-0036-00	D	7-01-83	6-30-86	§ 32.200 (a).
Lee, Herbert P., III. (Sumter, SC)	84-0013-01	VE	2-14-85	12-31-87	§ 32.200 (a).
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	7-07-83	7-06-86	§ 32.200 (a).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	4-12-84	4-11-87	§ 32.200 (c), (i).
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	1-11-85	1-10-88	§ 32.200 (a).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0501 82-0408	D	10-07-82	2-16-87	§ 32.200 (b), (c), (e), (i).
Newman, Fred M. (Vienna, VA)	83-0072-01	D	9-30-83	9-29-86	§ 32.200 (i).
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-29-83	11-28-86	§ 32.200 (a).
Post-Tensioning Service Corporation (Saratoga, CA)	83-0001-00	D	7-08-83	7-07-86	§ 32.200 (a).
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	7-01-83	6-30-86	§ 32.200 (a).
Richmond, Elwood P. (Grand Forks, ND)	83-0006-01	D	6-06-83	6-05-86	§ 32.200 (a), (f).
Richmond Engineering, Inc. (Grand Forks, ND)	83-0006-00	D	6-06-83	6-05-86	§ 32.200 (a), (f).
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0006-02	D	6-06-83	6-05-86	§ 32.200 (a), (f).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	5-17-84	5-16-87	§ 32.200 (a).
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	5-18-84	5-17-87	§ 32.200 (a).
Shepherd, Frank A. (Savannah, TN)	83-0046-01	D	7-15-83	11-03-85	§ 32.200 (a).
Slone, Francis (Swenzoy, NH)	83-0007-04	D	4-12-84	4-11-87	§ 32.200 (a), (c), (i).
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200 (a).
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200 (a).
Tucker, Kennath W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200 (a).
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	7-08-83	7-07-86	§ 32.200 (a).
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	4-14-83	4-13-86	§ 32.200 (a).
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	6-27-83	6-26-86	§ 32.200 (a).
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	4-15-85	4-14-87	§ 32.200 (a).
Whyte, Herbert G. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200 (b), (e).
Wirt, David (Douglasville, GA)	82-0601 82-0408	D	10-07-82	2-16-87	§ 32.200 (b), (c), (e), (i).
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	2-16-87	§ 32.200 (c), (e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	2-16-87	§ 32.200 (c), (e), (i).

EPA MASTER LIST OF DEBARRED, SUSPENDED, AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To—	Grounds
Zeigler, Beaty Stevens (Sumter, SC)	83-0045-01	VE	7-15-83	8-31-86	§ 32.200 (a).

[1] D = Debarred; S = Suspended; VE = Voluntarily excluded.

[FR Doc. 85-15408 Filed 6-26-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 20, 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. 96-511.

Copies of these submissions are available from the Commission by calling Doris B. 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.: 3060-0025
Title: Application for Restricted Radiotelephone Operator Permit—Limited Use
Form No.: FCC 755
Action: Extension
Estimated Annual Burdens: 5,000 Responses; 500 Hours.
OMB No.: 3060-0073
Title: Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment
Form No.: FCC 808
Action: Extension
Estimated Annual Burdens: 200 Responses; 17 Hours.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85-15419 Filed 6-26-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

First Security Corporation of Kentucky et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 19, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Security Corporation of Kentucky*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Clark County Bancorporation, Inc., Winchester, Kentucky.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Independent Banks of Virginia, Inc.*, Norfolk, Virginia; to acquire 100 percent of the voting shares of Princess Anne Commercial Bank, Fairfax, Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *FirstBanc Holding Company, Inc.*, Robertsdale, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Baldwin County, Robertsdale, Alabama.

2. *Mississippi River Bancshares, Ltd.*, Belle Chasse, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Mississippi River Bank, Belle Chasse, Louisiana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebanco, Inc.*, Wallace, Nebraska; to acquire 5.71 percent of the voting shares of American Corporation, North Platte, Nebraska, thereby indirectly acquiring American Security Bank, North Platte, Nebraska.

Board of Governors of the Federal Reserve System, June 21, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-15423 Filed 6-26-85; 8:45 am]
BILLING CODE 6210-01-M

Weleetka Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Weleetka Bancorporation, Inc.*, Weleetka, Oklahoma; to engage through its subsidiary, Weleetaka Property and Casualty Agency, Inc., Weleetka, Oklahoma, in the sale of general insurance in a community with a population not exceeding 5,000 persons under section 4[c][8][C][i] by acquiring the assets of Dale Cates Insurance Agency, Weleetka, Oklahoma.

Board of Governors of the Federal Reserve System, June 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15424 Filed 6-26-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Reports; Availability of Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463 (5 U.S.C. Appendix 2), the Fiscal Year 1984 annual reports for the following advisory committees utilized by the Centers for Disease Control have been filed with the Library of Congress: Board of Scientific Counselors, National Institute for Occupational Safety and Health; Mine Health Research Advisory Committee; Safety and Occupational Health Study Section.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC (telephone 202/287-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC (telephone 202/245-6791).

Dated: June 18, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-15410 Filed 6-26-85; 8:45 am]

BILLING CODE 4160-19-M

Mine Health Research Advisory Committee, X-Ray Surveillance Subgroup; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

X-Ray Surveillance Subgroup of the Mine Health Research Advisory Committee

Date: July 15, 1985.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Time: 8:00 a.m. to 5:00 p.m.

Purpose: The Committee subgroup is charged with determining if the Committee should recommend to NIOSH that the Institute conduct the entire x-ray surveillance program for coal miners. If so, the subgroup is to consider what criteria should be met to justify the initiation and continuation of this program by NIOSH in terms of factors such as participation rate, detection rate of disease, and transfer rate to less dusty jobs. Other issues, such as quality of films, may also be discussed.

Viewpoints and suggestions from manufacturers of x-ray equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Robert E. Glenn at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Dr. Nicholas Sargent, University of Southern California, School of Medicine, Department of Radiology, 1200 North State Street, Los Angeles, California 90033, prior to or at the subgroup meeting.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Phone: (304) 291-4474.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research. The subgroup, composed of members of the MHRAC, will provide a report to the full Committee at a future meeting and will give a status report on its activities to the MHRAC at the next meeting.

Dated: June 19, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-15409 Filed 6-26-85; 8:45 am]

BILLING CODE 4160-19-M

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Control; Program Announcement

I. Introduction

A. Purpose and Authority

Project Grants for the Prevention and Control of Sexually Transmitted Diseases (STD) are awarded to State and local governments to assist in establishing, improving, and implementing integrated and comprehensive STD systems capable of preventing and interrupting STD as authorized under section 318(c) of the Public Health Service Act (42 U.S.C. 247c) as amended. Public and professional education activities authorized under sections 318(b)(3) and (4) of the Act, and integral to State control programs, are also a part of these grants.

Financial and direct (i.e., "in lieu of cash") assistance under this program is described in the Catalog of Federal Domestic Assistance number 13.977. Regulations governing the implementation of this legislation are covered under 42 CFR Part 51b, Subparts A and D.

B. National Program Goals

The National Program Goals are based on the national objectives for control of sexually transmitted diseases included in the 1980 PHS document "Promoting Health/Preventing Disease: Objectives for the Nation." U.S. Government Printing Office, Washington, D.C., fall 1980. The high priority objectives are:

1. By 1990, reported gonorrhea incidence should be reduced to a rate of 280 cases per 100,000 population. In 1984, the rate was 376.1 cases per 100,000 population.

2. By 1990, reported incidence of gonococcal pelvic inflammatory disease (PID) should be reduced to a rate of 60 cases per 100,000 females. In 1984, the rate was 99 cases per 100,000 females.

3. By 1990, reported incidence of primary and secondary syphilis should be reduced to a rate of seven cases per

100,000 population per year. In 1984, the rate was 12 cases per 100,000 females.

4. By 1990, reported incidence of congenital (under 1 year) syphilis cases should be reduced to 1.5 cases per 100,000 live births. In 1984, the rate was 6.5 cases per 100,000 live births.

5. By 1990, every junior and senior high school student should receive accurate, timely STD education. (No baseline data is available.)

6. By 1990, at least 95 percent of health care providers seeing suspected cases of STD should be capable of diagnosing and treating all currently recognized STD's. (No baseline data is available.)

Based on analyses of current trends in sexually transmitted diseases and syndromes and assessment of scientific and technologic capabilities, the Center for Prevention Services (CPS) has established the following additional objectives:

1. By 1987, the Division of Sexually Transmitted Diseases (DSTD), CPS, will collaborate with 64 project areas to develop and implement a chlamydia prevention and control program.

2. By 1988, the DSTD will collaborate with 64 project areas to develop and implement national data information systems to evaluate overall program effectiveness, and local data systems to track local program performance.

C. Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments including the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Before making a grant to a local public health agency, the granting agency of the Department of Health and Human Services (HHS) consults with the State health authority.

D. Availability of Funds

Based on the President's budget, it is expected that approximately $40,000,000 to $41,400,000 will be available in Fiscal Year 1986 to award 64 continuation grants to supplement programs to control STD and prevent its complications. The average award in Fiscal Year 1986 is expected to be $640,000, ranging from $27,000 to $3,000,000. Grants are usually funded for 12 months in a 3- to 5-year project period. No new grants are expected to be made in 1986 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

II. Application Procedure

A. Forms

Application for grants must be made on the standard application form, PHS 5161–1, which may be obtained from the appropriate Health and Human Services (HHS) Regional Office as set forth below.

B. Consultation

Consultation and assistance in developing applications and program plans are available through the HHS Regional Offices.

C. Budget Information

1. Applications should be submitted for a 1-year budget period and a 2- to 5-year project period. Although there are no specific matching fund requirements, information about Federal, State, and other applicant contributions may be provided in the application narrative. Therefore, applicant contributions to the program do not need to be provided on the budget pages of the application unless the applicant desires that these contributions be included as part of the approved budget on the grant award. Information which justifies or explains budget items must also be included in the narrative part of the application; in some instances, information or commitment of applicant support of specific items during the budget period may be required.

2. Special Budget Information for Public and Professional Education Programs. Because STD public and professional education activities related to STD control programs are authorized separately from other STD control activities, information is needed on the amount of funds to be used for this purpose. Estimates of the amount of Federal funds for STD public and professional education activities must be included in the budget narrative portion of the application. At a minimum, funds for education should represent at least 10 percent of the total budget and should be identified in two categories: public and professional. Each category should show education funds to be used for personnel, travel, equipment, supplies, and other.

D. Submission of Applications

Information about the timing and routing of applications and the consequences of late submission will be included in each application packet from the appropriate HHS Regional Office. Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

E. Program Narrative

1. *New or competing continuation applications* must include a narrative which describes the following:

a. *Background and Need for Grant Support.* (1) A review shold be provided of the extent of the STD problem and of the communities, localities, and groups in which the diseases are focused.

(2) A review should be provided of the public, private, and voluntary health care delivery systems in the project area which are or will be available to assist in meeting the objectives of the program, the current and planned STD activities of those systems, and the extent to which the STD program is providing reciprocal services (e.g., family planning assistance and referrals, maternal and child health, primary care centers, Indian Health Service, migrant health clinics, and National Health Service Corps, etc.) to augment the impact of health providers who expand their service to assist STD control.

b. *Objective Setting.* (1) Objectives must be established which are specific, measurable, time-framed, and realistic.

(2) Objectives must be clearly related, either directly or indirectly, to the National Program Goals, although specific targets will depend upon the level of disease intervention currently being achieved in each project area.

(3) Both short-term objectives (1 year) which will be reached during the ensuing funding period, and long-term objectives (2 to 5 years) must be developed.

(4) If objectives do not cover all National Program Goals, justification must be provided that the objectives selected are of highest priority based on local problems and resources.

c. *Methods of Operation.* An approvable program must include elements in accordance with "Guidelines for STD Control Program Operations":

(1) Methods of conducting surveillance for chlamydia, gonorrhea, syphilis, genital herpes, nongonococcal urethritis, and their complications (including neonatal involvement and PID), and for each of the other STD's addressed in the objectives.

(2) Methods of conducting, managing, and supervising disease intervention outreach activities, including a description of those types of patients to whom the process will be applied and the method of followup for each.

(3) Methods of conducting gonorrhea culture screening along with procedures

for operational quality assurance of the system.

(4) Methods for the identification and control of penicillinase-producing *N. gonorrhoeae* (PPNG) and other resistant gonococcal organisms.

(5) Methods for promoting the widespread identification and adequate diagnosis and treatment of STD associated pelvic inflammatory disease.

(6) Methods for identifying and managing PID intervention outreach activities related to cases diagnosed in, or referred to, public STD clinic facilities.

(7) Methods of implementing pilot chlamydia diagnostic services to asymptomatic high risk groups.

(8) Methods of assuring that patients, health providers, distinct risk groups, school children, approval/support groups, and the general public receive educational messages regarding behaviors which support efforts to control STD and prevent their complications, in accordance with the "Guidelines for STD Education" (CDC publication).

(9) Methods of ensuring that during Fiscal Year 1986 at least 50 percent of junior and senior high school students in the project area receive accurate and timely education about STD.

(10) Methods of ensuring that efficient, nonjudgmental, and high quality STD diagnositc and treatment services exist int he public and private sectors, and of guaranteeing that sould management procedures for diagnosing and treating STD patients are being followed, in accordance with the "Quality Assurance Guidlines for STD Clinics—1982" (CDC publication).

(11) Methods of ensuring that during Fiscal Year 1986 at least 60 percent of public health care providers seeing suspected cases of STD (in STD clinics, Ob-Gyn clinics, family planning clinics, etc.) revceive appropriate opportunities to acquire necessary diagnostic and treatment skills through courses at STD Prevention/Teratment Centers or other comparable courses.

(12) Methods of ensuring the professional development and the consistent quality of performance of the Disease Intervention Specialist staff in accordance with the "Quality Assurance Guidelines for Managing the Performance of Disase Intervention Specialists in STD Control."

The following CDC publications, which provide elaboration on many of these program elements, will be available through the appropriate HHS Regional Offices in the near future:

Guidelines for STD Education

Guidelines for STD Control Program Operations

Quality Assurance Guidelines for STD Clinics—1982

The National Policy and Procedure for the Interstate and International Transmission for Sexually Transmitted Disease Intervention Information

Quality Assurance Guidelines for Managing the Performance of Disease Intervention Specialists in STD Control

d. *Evaluation.* Measures must be established to evaluate the achievement of each project objective and element listed under II. E. 1. b. and c., above.

2. *Continuation applications* must provide short-term objectives for the new budget period, a budget justification, a progress report on activities performed and results achieved during the prior budget period, and a description of the method of operation, long-term objectives, need for grant support, and evaluation procedures compared to information provided in previous applications. These applications must address those National Goals not currently being addressed by the project.

III. Criteria for Reviews and Award of Grants

A. Each application will be reviewed and evaluated according to the following criteria:

1. Are the project objectives specific, measurable, realistic, and clearly related, either directly or indirectly, to the National Program Goals?

2. Is each program element addressed by the applicant? Will the proposed activities result in a balanced program of service delivery, surveillance of disease, assessment, disease intervention, and public and professional education?

3. Are the budget requests and proposed use of project funds appropriate and reasonable for a balanced program?

4. Is the applicant capable of carrying out the proposed activities successfully within the requested budget?

5. If the applicant has previously had a sexually transmitted diseases grant, does the applicant detail progress toward previously established objectives and satisfactorily explain any areas in which the objectives were not met? Do the resulting goals, objectives, and methods relate to problems described in failure to meet previous objectives?

6. Does the applicant describe the method for attaining or plans to attain the required activities as stated under Item II. E. 1. c., "Methods of Operation"?

7. Are the methods for evaluating the project's effectiveness reasonable and appropriate?

IV. Reporting Requirements

An original and 2 copies of all reports are to be submitted to the HHS Regional Office, who will forward appropriate copies to the DSTD, CPS, CDC.

PHS 5154; form approved OMB No. 68-R1379	Financial status report	Annual	Required no later than 90 days after the end of each budget period—final financial status reports are required 90 days after the end of a project period
CDC 73.126; form approved OMB No. 0920-0128	Congenital syphilis followup	Per occurrence	10 days after completion of form.
CDC 73.688; form approved OMB No. 0920-0011	Sexually transmitted disease morbidity report	Quarterly	30 days after end of report period.
CDC 73.2127; form approved OMB No. 0920-0001	Quarterly epidemiologic activity report for venereal diseases	Quarterly	30 days after end of report period.
Project narrative	Quarterly STD project narrative	Quarterly	30 days after end of funding quarter.
CDC 73.2638; form approved OMB 0920-0011	Report of civilian cases of primary and secondary syphilis and gonorrhea by reporting source, sex, race/ethnicity and age group.	Annually	January 25.

Reporting forms and a description of procedures are available from the HHS Regional Offices.

V. Use of Grant Funds

A. Grant funds may be used for costs associated with planning, organizing and conducting STD control programs including personnel, supplies, and services which are directly related to STD intervention outreach; STD surveillance; containing the interstate spread of STD; and STD public information and education activities and STD professional education, training, and clinical skills improvement activities integral to State control programs.

B. Unless specifically approved, grant funds shall not be used for performing diagnostic tests (other than gonorrhea

screening tests), maintaining central registries, purchasing data processing equipment, or providing diagnostic and treatment facilities and services. The applicant must provide assurances, however, that these services will be available as needed as an adjunct to control program activities supported with grant funds. To obtain special approval for grant support of such activities, the grantee shall justify that funds for this purpose are necessary for the proper conduct of the program and are otherwise unavailable. Support of these services will generally be approved in the following situations: (1) Special studies or demonstrations, (2) developmental or start-up activity, or (3) essential service which will result in a savings to a detection or prevention activity supported by the grant. Unless otherwise approved, exceptions are only allowed during one funding period. The grantee is expected to support these activities in subsequent funding periods.

C. Grant funds may not be used to supplant funds supporting existing STD control services provided by a State or locality.

Dated: June 20, 1985.

Robert L. Foster,

Assistant Director, Office of Program Support Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 34th Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430.

[FR Doc. 85-15381 Filed 6-26-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topics to be discussed are Pregnancy Warning Lables for Over-the-Counter (OTC) Drugs and Estrogens for the Treatment of Osteoporosis.

Date: Monday, July 8, 1985, 10 a.m.

Address: Food and Drug Administration, 297 Plus Park Blvd, Nashville, TN 37217.

For Further Information Contact: Barbara L. Lloyd, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-251-5208.

Dallas District Office, chaired by Donald Healton, Regional/District Director. The topics to be discussed are Health Frauds and Medical Devices.

Date: Wednesday, July 10, 1985, 9:30 a.m. to 12 m.

Address: Texas Rehabilitation Commission Office, 707 North Palestine St., Athens, TX 75751.

For Further Information Contact: Hazel Wallace, Consumer Affairs Officer, Food and Drug Administration, 1200 Main Tower Bldg., Dallas, TX 75202, 612-349-3907.

Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topic to be discussed is Health Frauds Affection the Elderly.

Date: Tuesday, July 23, 1985, 9:30 a.m.

Address: Senior Citizens, Inc., 1801 Broadway, Nashville, TN 37203.

For Further Information Contact: Barbara L. Lloyd, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-251-5208.

Philadelphia District Office, chaired by Loren Y. Johnson, District Director. The topics to be discussed are Sulfites, Aspartame, and Food Irradiation, Updates.

Date: Thursday, September 12, 1985, 9:30 a.m. to 12 m.

Address: William J. Green Federal Bldg., Rm. 3306-10, 600 Arch St., Philadelphia, PA 19106.

For Further Information Contact: Thereas A. Young, Consumer Affairs Officer, 2nd and Chestnut Sts., Philadelphia, PA 19106, 215-597-0837.

Pittsburgh Resident Post, chaired by Loren Y. Johnson, District Director. The topics to be discussed are Sulfites, Aspartame, and Food Irradiation, Updates.

Date: Wednesday, September 25, 1985, 9:30 a.m. to 1 p.m.

Address: Federal Bldg., Rm. 2212-14, 1000 Liberty Ave., Pittsburgh, PA 15222.

For Further Information Contact: Thereas A. Young, Consumer Affairs Officer, 2 nd and Chestnut Sts. Philadelphia, PA 19106, 215-597-0837.

Supplementary Information: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 21, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15377 Filed 6-26-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Determination To Delay Effective Date of Certification Extension of No Adverse Impact on Theodore Roosevelt National Park and Lostwood National Wildlife Refuge Under Section 165(d)(2)(C)(iii) of the Clean Air Act

AGENCY: Department of the Interior.

ACTION: Effective Date; Revision.

SUMMARY: This notice announces the Federal Land Manager's (FLM) determination to delay until July 1, 1985, the effective date of the February 14, 1985, extension of the September 1982 certification of no adverse impact under section 165(d)(2)(C)(iii) of the Clean Air Act with respect to two Prevention of Significant Deterioration permits under consideration for extension by the North Dakota State Department of Health (NHSDH).

DATE: The certification extensions, not to exceed eighteen consecutive months,

will be effective as of the date of the NDSDH's permit extensions, provided such issuance date is on or before July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mark A. Scruggs, Air Quality Division, National Park Service-AIR, P.O. Box 25287, Denver, CO 80225, telephone number (303) 236-8765.

SUPPLEMENTARY INFORMATION: On February 14, 1985, the FLM extended the certification of no adverse impact for the proposed Nokota and Basin Electric projects near Theodore Roosevelt National Park and Lostwood National Wildlife Refuge (wilderness portion), "class I" air quality areas, in North Dakota (50 FR 7658 (February 25, 1985)). This determination was based on the fact that no new technical information had become available that altered the conclusions of the FLM's original, 1982 review of the Nokota and Basin Electric projects. The term of these certification extensions was to be the same as the term of the proposed NDSDH's permit extensions. As proposed, the NDSDH permit extensions would have begun on or before June 1, 1985, and would have been valid for eighteen months.

The FLM included the date "June 1, 1985" in the certification extension determination so that the term of the certification extension would coincide with the term of the State permit extension. However, the NDSDH recently informed us that they cannot make a final permit extension determination by June 1, 1985. July 1, 1985, now appears to be a more realistic date for such a determination.

Our review of current (1984) sulfur dioxide monitoring data gathered by the NDSDH, and an updated literature search of possible effects to vegetation, indicates that the conclusions of our past determinations of no adverse impact are still valid. A one month delay to allow the permit extension to begin on July 1, 1985, would not affect our conclusion that the proposed facility, in conjunction with other sources in the area, will not cause an unacceptable adverse impact on the resources of Theodore Roosevelt National Park and Lostwood National Wildlife Refuge (wilderness portion).

Therefore, to allow the NDSDH additional time to process the State permit extension requests, and to still have the term of our certification extension coincide with the term of the State permit extension, if one is granted, we are hereby modifying our February 14, 1985, certification extension by changing the June 1 date to July 1. Accordingly, the FLM's extension of the no adverse impact certification would begin on or before July 1, 1985, if the State issues the permit extension, and would remain in effect no more than eighteen consecutive months.

Dated: June 21, 1985.

Susan Recce,

Acting Assistant Secretry for Fish and Wildlife and Parks, Federal Land Manager of Theodore Roosevelt National Park and Lostwood National Wildlife Refuge.

[FR Doc. 85-15372 Filed 2-26-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[M 62073(ND)]

Emergency Coal Lease Offering by Sealed Bid

Notice is hereby given that the coal resources in the lands described below in Oliver County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency application filed by Baukol-Noonan, Inc., in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 et. seq.). The lease sale will be held at 10:00 a.m., Thursday, July 18, 1985, in the Conference Room on the Sixth Floor of the Granite Tower Building at the above address.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significiant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Sealed bids must be submitted on or before 9:00 a.m., Thursday, July 18, 1985, to the Cashier, Montana State Office, Second Floor, Granite Tower, at the above address. The bids should be sent by certified mail, return receipt; or be hand-delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately three miles south of the town of Center, North Dakota, near the Center Mine:

T. 141 N., R. 84 W., 5th P.M.,
Sec. 2, lots 3, 4, SW¼NW¼;
Sec 10, N½NE¼, NE¼NW¼.

Containing 239.93 acres, Oliver County, North Dakota.

This tract contains an estimated 1.49 million tons of recoverable lignite. The Upper Hagel seam averages 4.5 feet in thickness and the Lower Hagel seam averages 10.7 feet in thickness. These seams are lignite and average (as-received) 6,623 BTU/lb. with 36.7 percent moisture, 0.7 percent sulfur, 8.0 percent ash, 26.6 percent fixed carbon and 28.0 percent volatile matter.

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Case file documents are also available for public inspection at the Montana State Office.

Dated: June 19, 1985.

Marvin LeNoue,

Acting State Director.

[FR Doc. 85-15466 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-84-M

Boise District Office; Grazing Advisory Board Meeting

ACTIONS: Boise District, Idaho, Grazing Advisory Board Meeting, Interior.

SUMMARY: In accordance with Pub. L. 92-463, the Federal Advisory Committee Act, and Pub. L. 92-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Advisory Board will meet July 23-24, 1985.

SUPPLEMENTARY INFORMATION: The first day of the meeting will consist of a tour of the Bruneau Resource Area for

advisory board members. The purpose of the tour is to visit areas where range improvement monies have been expended. This will include fences, pipelines, exclosures, and other points of general interest. The tour will leave the Boise District Office at 8:00 a.m. and return by 5:00 p.m. on July 23, 1985.

The second day of the meeting will take place on July 24, from 8:00 a.m. to 4:30 p.m. It will be held in the main floor conference room at the Boise District Office. The public is invited and a public comment period is scheduled from 1:00 p.m. to 2:00 p.m. Major topics for discussion are as follows:

—Update of Fiscal Year 1985 8100 Expenditures
—Proposed Fiscal Year 1986 8100 Projects
—Discussion of 5-Year Plan for Future Expenditures of 8100 Funds

FOR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

Martin J. Zimmer,

District Manager.

[FR Doc. 85–15488 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-GG-M

Illinois, Intent To Prepare a Planning Analysis

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Management Planning.

SUMMARY: The Milwaukee District Office, Bureau of Land Management, is initiating a plan in the State of Illinois to determine the eventual disposition of Bureau-administered public lands and to delineate areas and objectives for management of Federal mineral estate. The plan will be prepared under the provisions of 43 CFR 1610.8(b) and other applicable regulations.

Key Dates and Public Reviews

Notice and Request for Comments—June 1985
Second Request for Comments—August 1985
Proposed Plan Released—October 1985
Final Decision—December 1985

SUPPLEMENTARY INFORMATION: Federal public lands administered by the Bureau in Illinois consist of three small tracts located in two counties. Total acreage is approximately 2.11 acres. Two of the tracts are under application by the State of Illinois for recreation and public purposes. These tracts are also involved in title conflict cases which must be resolved prior to any other action.

Approximately 5,200 acres of Federal minerals underlie state, county and private surface ownership in 28 Illinois counties.

The Bureau will decide whether to retain or dispose (through sale, interagency transfer, R&PP lease or other means) of surface tracts. The final plan will also delineate minerals management areas and objectives based on development potential and the sensitivity of surface resources. Planning decisions will be prepared by the Milwaukee District Manager and approved by the Eastern States Director, Bureau of Land Management, Alexandria, Virginia. The environmental assessment to be prepared during this planning effort will evaluate and compare the probable effects of the proposed plan, a "no action" alternative (meaning no change from current management), and reasonable lands and minerals subalternatives.

Planning team members will include a natural resource specialist, a cultural resource specialist, a realty specialist, and two geologists.

Persons wishing to comment and to be kept informed on this effort should contact the Team Leader at the address or telephone number listed below. Please request to be placed on the mailing list for the Illinois Plan.

FOR FURTHER INFORMATION CONTACT: Gary Lipp, Illinois Planning Team Leader, U.S. Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201. Telephone (414) 291–4437, FTS 362–4437.

Chuck Steele,

Milwaukee District Manager.

June 21, 1985.

[FR Doc. 85–15487 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-PN-M

[W-86837]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a)(b)(1), a petition for reinstatement of oil and gas lease W–86837 for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86837 effective April 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Judith A. Moffitt,

Acting Chief, Leasing Section.

[Fr Doc. 85–15465 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-22-M

[CA 7292 WR, CA 7607 WR, CA 7344 WR, CA 7324 WR, CA 7603 WR, CA 8018 WR]

California; Termination of Small Tract Classification Nos. 238, 459, 552, 456, 536, and 335

June 14, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates six small tract classifications in their entirety, affecting approximately 1,957 acres of public land for disposition, pursuant to the Small Tract Act of 1938. The lands are located in areas of the Folsom and Caliente Resource Areas of the Bakersfield District Office.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 484–4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the small tract classifications and segregation of public lands affecting lands described in the following **Federal Register** publication notices, are hereby terminated in their entirety:

Mount Diablo Meridian

CA 7292 WR

Small Tract No. 238 dated September 15, 1950, as amended, 15 FR 7150 (October 25, 1950 (FR Doc. 50–9421)).

The lands described in the above-referenced document aggregate approximately 105 acres in Kern County.

CA 7607 WR

Small Tract No. 459 dated October 24, 1955, as amended, 20 FR 8201 (November 1, 1955 (FR Doc. 55-8788)).

The lands described in the above referenced document aggregate approximately 960 acres in Kern County.

CA 7344 WR

Small Tract No. 552 dated December 15, 1958, as amended, 23 FR 10192 (December 24, 1953 (FR Doc. 58-10576)).

The lands described in the above referenced document aggregate approximately 160 acres in Kern County.

CA 7324 WR

Small Tract No. 456 dated May 2, 1955, 20 FR 3189 (May 11, 1955 (FR Doc. 55-3774)).

The lands described in the above referenced document aggregate approximately 400 acres in Kern County.

CA 7603 WR

Small Tract No. 536 dated March 21, 1958, as amended, 23 FR 2080 (March 28, 1958 (FR Doc. 58-2282)).

The lands described in the above-referenced document aggregate approximately 272 acres in Calaveras County.

CA 8018 WR

Small Tract No. 335 dated May 16, 1952, 17 FR 4899 (May 29, 1952 (FR Doc. 52-5922)).

The lands described in the above-referenced document aggregate approximately 40 acres in Calaveras County.

1. Land description of each classification is available for inspection at the California State Office in Sacramento and in Bakersfield at the Bakersfield District Office.

2. The classifications segregated the public lands from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws, pursuant to the Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended. The Small Tract Act of 1938 was repealed by Section 702 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2789); the classification, therefore, no longer serve a useful purpose.

3. Various tracts of land were patented pursuant to the Small Tract Act under which the mineral estates were reserved to the United States. Approximately 427 acres of land described in the above-referenced **Federal Register** notices were not disposed of and remain in Federal ownership.

4. Accordingly, at 10 a.m. on July 29, 1985, the lands remaining in Federal ownership will be open to operations of the public land laws, generally, including location under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable laws. Until appropriate rules and regulations are issued by the Secretary of Interior, the reserved minerals on the *nonpublic* lands are not subject to location under the United States mining laws.

5. The appropriation of any of the public lands referenced in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Ronald Hofman,

Associate State Director.

[FR Doc. 85-15467 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-40-M

Missouri, Intent To Prepare a Planning Analysis

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Management Planning.

SUMMARY: The Milwaukee District Office, Bureau of Land Management, is initiating a plan in the State of Missouri to determine the eventual disposition of Bureau-administered public lands and to delineate areas and objectives for management of Federal mineral estate. The plan will be prepared under the provisions of 43 CFR 1610.8(b) and other applicable regulations.

Key Dates and Public Reviews

Notice and Request for Comments—June 1985

Second Request for Comments—August 1985

Proposed Plan Released—October 1985

Final Decision—December 1985

SUPPLEMENTARY INFORMATION: Federal public lands administered by the Bureau in Missouri consist of eight small tracts located in eight counties. Total acreage is approximately 400 acres. These tracts are also involved in title conflict cases which must be resolved prior to any other action.

Approximately 13,800 acres of Federal minerals underlie state, county and private surface ownership in 59 Missouri counties.

The Bureau will decide whether to retain or dispose (through sale, interagency transfer, R&PP lease or other means) of surface tracts. The final plan will also delineate minerals management areas and objectives based on development potential and the sensitivity of surface resources. Planning decisions will be prepared by the Milwaukee District Manager and approved by the Eastern States Director, Bureau of Land Management, Alexandria, Virginia.

The environmental assessment to be prepared during this planning effort will evaluate and compare the probable effects of the proposed plan, a "no action" alternative (meaning no change from current management), and reasonable lands and minerals subalternatives.

Planning team members will include a natural resource specialist, a cultural resource specialist, a realty specialist, and two geologists.

Persons wishing to comment and to be kept informed on this effort should contact the Team Leader at the address or telephone number listed below. Please request to be placed on the mailing list for the Missouri Plan.

FOR FURTHER INFORMATION CONTACT: Gary Lipp, Missouri Planning Team Leader, U.S. Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201. Telephone (414) 291-4437, FTS 362-4437.

Chuck Steele,

Milwaukee District Manager.

June 21, 1985.

[FR Doc. 85-15480 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-PN-M

Oregon; Wild Horse Gathering Schedule Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Burns District Office: Statewide Wild Horse Gathering Schedule Public Meeting

SUMMARY: In accordance with Pub. L. 92-195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horse and the proposed gathering schedule in Oregon for FY 85 and 86.

DATE: July 25, 1985, 3:00 P.M. to 4:30 P.M.

ADDRESS: The meeting will take place at the BLM Burns District Office in Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns,

Oregon 97720—Telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal Year 1985 and 1986 will be discussed along with other aspects of the program and adoption process.

The gathering schedule will be presented at the meeting and will show the wild horse herds containing excess numbers. The total number of horses expected to be gathered is approximately 1,780. This is subject to change depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720 by July 22, 1985. Written statements must also be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: June 18, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-15468 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-33-M

[OR-19343]

Oregon; Conveyance of Public Lands; Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 29,852.77 acres of public lands out of Federal ownership. This action will also open 12,154.16 acres of reconveyed lands to surface entry.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 29,852.77 acres of lands in Crook, Deschutes, and Harney Counties, Oregon, from Federal to State ownership with a reservation of all minerals to the United States.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 14 S., R. 11 E.,
Sec. 16, E½, NE¼SW¼, and S½SW¼.
T. 15 S., R. 11 E.,
Sec. 16, N½NW¼;
Sec. 21, NE¼;
Sec. 36, NW¼NW¼.
T. 4 S., R. 12 E.,
Sec. 25, SE¼NE¼;
Sec. 36, NW¼NW¼.
T. 4 S., R. 13 E.,
Sec. 16, NW¼NE¼, SE¼NW¼, and NW¼SW¼.
T. 5 S., R. 13 E.,
Sec. 36, E½NE¼, NW¼NW¼, and N½SE¼.
T. 16 S., R. 13 E.,
Sec. 36, S½NW¼ and SE¼NW¼.
T. 15 S., R. 14 E.,
Sec. 16, E½SW¼, SW¼SW¼, and SW¼SE¼.
T. 16 S., R. 14 E.,
Sec. 32, NW¼;
Sec. 33, SW¼.
T. 17 S., R. 14 E.,
Sec. 8, N½;
Sec. 36, NW¼NE¼.
T. 19 S., R. 16 E.,
Sec. 36, N½N½, S½NW¼, and NW¼SW¼.
T. 16 S., R. 17 E.,
Sec. 11, NW¼SE¼.
T. 20 S., R. 17 E.,
Sec. 1, S½SW¼;
Sec. 2, SE¼SE¼;
Sec. 11, NE¼NE¼;
Sec. 12, NW¼NE¼, N½NW¼, and SE¼NW¼.
T. 1 S., R. 18 E.,
Sec. 36, S¼SW¼ and SW¼SE¼.
T. 5 S., R. 18 E.,
Sec. 36, E¼NE½.
T. 5 S., R. 19 E.,
Sec. 16, NW¼NW¼.
T. 22 S., R. 20 E.,
Sec. 29, S½;
Sec. 31;
Sec. 32.
T. 23 S., R. 20 E.,
Sec. 5;
Sec. 6.
T. 15 S., R. 21 E.,
Sec. 36, N½.
T. 16 S., R. 21 E.,
Sec. 16, lots 1 to 4, inclusive, 6 to 10, inclusive, and 12, NE¼SW¼, and S½SW¼.
T. 18 S., R. 21 E.,
Sec. 16, W½.
T. 20 S., R. 21 E.,
Sec. 36, S½NE¼, W½NW¼, SE¼NW¼, SW¼, and NW¼SE¼.
T. 21 S., R. 21 E.,
Sec. 36.
T. 22 S., R. 21 E.,
Sec. 36, all, except 1.81 acres in highway right-of-way.
T. 9 S., R. 22 E.,
Sec. 23, NE¼NW¼;
Sec. 28, SW¼NE¼ and NW¼SE¼.
T. 21 S., R. 22 E.,
Sec. 16, NW¼ and S½.
T. 21 S., R. 22 E.,
Sec. 36.
T. 23 S., R. 22 E.,
Sec. 16;
Sec. 36.
T. 22 S., R. 23 E.,
Sec. 36.
T. 23 S., R. 23 E.,
Sec. 16, all, except 11.25 acres in highway right-of-way.

The areas described aggregate 12,154.16 acres in Crook, Deschutes, Gilliam, Lake, Sherman, Wasco, and Wheeler Counties, Oregon.

3. The mineral estate in the following described lands is already in United States ownership and remains open to operation of the United States mining laws and mineral leasing laws:

Willamette Meridian

T. 22 S., R. 20 E.,
Sec. 29, S½;
Sec. 31 lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32.
T. 23 S., R. 20 E.,
Sec. 5;
Sec. 6.

The areas described aggregate 2,560.64 acres in Deschutes and Lake Counties, Oregon.

4. The mineral estate in the reconveyed lands, except as provided in paragraph 3, was not reconveyed to the United States and remains out of Federal ownership.

5. At 8:30 a.m., on August 5, 1985, the recoveyed lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 5, 1985, will be considered as simultaneously filed at the time. Those received thereafter will be considered in the order of filing.

Dated: June 19, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-15461 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 19234]

Oregon; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land

withdrawal for the Fern Ridge Dam and Reservoir Project continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but would be opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers proposes that the existing land withdrawal made by Public Land Order No. 497 of July 13, 1948, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located approximately 6 miles west of Eugene and contains 5.27 acres within Sections 27 and 28, T. 17 S., R. 5 W., W.M., Lane County, Oregon.

The purpose of the withdrawal is to protect the Fern Ridge Dam and Reservoir Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except that the land would be opened to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 19, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–15462 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-33-M

Buffalo Resource Area, Casper, District Wyoming, Buffalo Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the Protest Period for the Buffalo Resource Management Plan and Environmental Impact Statement (RMP/EIS).

SUMMARY: The Buffalo final RMP/EIS was publicly circulated the last of May. The cover letter in the document defined that the protest period ended on July 1, 1985. The protest period for the proposed RMP and EIS is hereby extended to 30 days after the EIS filing date established in the **Federal Register** by the Environmental Protection Agency.

Further information regarding the Buffalo RMP/EIS can be obtained from: Glenn Bessinger, Area Manager, Buffalo Resource Area, BLM, 300 Spruce Street, Buffalo, Wyoming 82834.

James W. Monroe,

District Manager.

[FR Doc. 85–15489 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-22-M

[AA–6677–A]

Alaska Native Claims Selection; Koniag Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Koniag Inc., Regional Native Corporation for the village of Larsen Bay for approximately 37.23 acres. The lands involved are on Camp Island in the vicinity of Larsen Bay and within the Kodiak Naitonal Wildlife Refuge.

Seward Meridian, Alaska

T. 32 S., R. 30 W. (Unsurveyed).
A poriton of Secs. 25 and 36.

A notice of the decision will be published once a week for four (4) consecutive weeks in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 29, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Nellie C. Alloway,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–15426 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-JA-M

[AA–16169]

Alaska Native Claims Selection; Aleut Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to the Aleut Corp. for approximately 7,037 acres. The lands involved are on Unalaska Island.

Seward Meridian, Alaska (Unsurveyed)

T. 72 S., R. 118 W.,
T. 72 S., R. 119 W.,
T. 72 S., R. 120 W.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 29, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–15425 Filed 6–26–85; 8:45 am]

BILLING CODE 4310-JA-M

Revision of Established Use Fees at Selected Campgrounds; Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of use fees at Empire Landing and Squaw Lake Campgrounds, Yuma District, Arizona.

SUMMARY: Use fees for camping at Empire Landing and Squaw Lake Campgrounds are revised to $5.00/day/campsite.

EFFECTIVE DATE: The revised Yuma District Campground fee schedule will be effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Hal Hallett, Yuma District Outdoor Recreation Planner, Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364–0697, telephone (602) 726–6300.

SUPPLEMENTAL INFORMATION: The Empire Landing Campground is located 8 miles northeast of Earp, California, on the Parker Dam Road. The Squaw Lake Campground is located 25 miles northeast of Yuma, Arizona, on the California side of the Colorado River off Imperial County Road S–24.

For purpose of this fee schedule, a "day" is defined as any 24-hour period or part thereof, beginning at 12:00 noon and ending on the following calendar day at 11:59 A.M. Fees for these areas will be posted at the entrances.

Authority: Authority for this fee schedule revision is contained in CFR Title 36, Chapter 1, Part 71, Subpart 71.9.

Dated: June 19, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85–15463 Filed 6–26–85; 8:45 am]

BILLING CODE 4310–32–M

[CA 7559 WR, CA 7574 WR]

California; Proposed Continuation of Withdrawals

June 14, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Mid-Pacific Region, proposes that two land withdrawals in the Modoc National Forest, affecting approximately 1,890 acres for the *proposed* Boundary Dam and Reservoir in the Klamath Project, continue for an additional 10 years. The lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by September 25, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 484–4431.

The Bureau of Reclamation proposes that two existing land withdrawals be continued for a period of 10 years, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

Mount Diablo Meridian

CA 7574 WR

Secretarial Order dated February 21, 1946

T. 48 N., R. 7 E.,
Sec. 15, Lots 1 thru 4, inclusive;
Sec. 16, Lots 1 thru 4, inclusive;
Sec. 19, NE¼;
Sec. 20, NW¼NW¼, and S½N½;
Sec. 21, SE¼SE¼;
Sec. 22, W½NE¼, NW¼, and S½;
Sec. 26, N½NW¼;
Sec. 27, N½N½.

The area described contains approximately 1,519.58 acres in Modoc County.

CA 7559 WR

Secretarial Order dated June 20, 1922

T. 48 N., R. 7 E.,
Sec. 17, Lots 1 thru 4, inclusive;
Sec. 18, Lots 1 and 2;
Sec. 20, N½NE¼, and NE¼NW¼.

The area described contains approximately 370.65 acres in Modoc County.

The purpose of the withdrawals is to protect lands around the *proposed* Boundary Dam and Reservoir area of the Klamath Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws but not mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–15464 Filed 6–26–85; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Central and Western Gulf of Mexico Lease Sales (April and August 1987) Call for Information and Nominations and Intent To Prepare an Environment Impact Statement

Correction

In the document beginning on page 26054 in the issue of Monday, June 24, 1985, make the following correction:

On page 26058, the file line was omitted and should have appeared at the bottom of the page as follows:

[FR Doc. 85–15109 Filed 6–21–85; 8:45 am]

BILLING CODE 1505–01–M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6578, Block 228, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 20, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie,

Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: 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 Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 21, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15475 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-Mr-M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 072, Block 12, South Pelto 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 Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on June 18, 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: Emile H. Simoneaux, Jr.; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that 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 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15472 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on June 17, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 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 uder 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 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15473 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5646, Block 295, 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 Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 20, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a

copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: 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 Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 21, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15476 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Transco Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Transco Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3414, Block 34, West Delta 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 Delcambre, Louisiana.

DATE: The subject DOCD was deemed submitted on June 18, 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: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 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 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15474 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor; Commission Decision To Reverse Portions of Initial Determination; To Issue a General Exclusion Order; and To Issue Cease and Desist Orders

AGENCY: International Trade Commission.

ACTION: Reversal of portions of an initial determination (ID) granting complainant's motion for summary determination; issuance of a general exclusion order; issuance of two cease and desist orders prohibiting respondents Emergency Products Corp. (EPC) and Alarm Supply Co., Inc. (ASC), from false advertising, passing off, and selling infringing products from inventory.

SUMMARY: The Commission has determined to reverse in part the administrative law judge's (ALJ's) ID in the above-captioned investigation granting the motion of complainant Scoggins Manufacturing, Inc. (SMI), for summary determination of violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The Commission has determined to reverse the ALJ's findings of no direct infringement of U.S. Letters Patent 3,697,188, no contributory infringement of U.S. Letters Patents Nos. 3,697,188 and 3,611,549 as to the flexible drill shaft, and the existence and infringement of a common law trademark.

The Commission has also determined that a general exclusion order, and cease and desist orders directed to respondents EPC and ASC, pursuant to sections 337(d) and (f) are the appropriate remedies for the violations of section 337 found to exist; that the public interest considerations enumerated in sections 337(d) and (f) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(g) shall be 420 percent of the entered value of the imported articles.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

SUPPLEMENTARY INFORMATION: On May 14, 1984, complainant SMI filed a complaint alleging unfair methods of competition and unfair acts in the importation and sale of certain apparatus for installing electrical lines. On June 20, 1984, the Commission instituted an investigation to determine whether there is a violation of section 337 by reason of: (1) Direct, contributory, and induced infringement of the claims of U.S. Letter Patents Nos. 3,697,188 and 3,611,549; (2) infringement of complainant's common law trademark; (3) false advertising; and (4) passing off. On December 27, 1984, the ALJ issued an ID that found two respondents in default and granted complainant's motion for summary determination of violation of section 337. The ALJ determined that there was a violation of section 337 in

the unauthorized importation and sale of certain apparatus for installing electrical lines and components therefor, on the basis of findings of (1) contributory infrngement of claims 1 and 2 of the '188 patent; (2) induced infringement of claims 1 and 2 of the '188 patent and claim 1 of the '549 patent; (3) the existence and infringement of a common law trademark; (4) passing off; and (5) false advertising. Complainant filed a petition for review of the ID. No other petitions for review or agency comments were received.

After examining the record in this investigation, including the ID, the petition for review, the brief in support of the petition, and the response thereto, the Commission determined to review the following issues: direct and contributory infringement of U.S. Letters Patents Nos. 3,697,188 and 3,611,549, and the existence and infringement of a common law trademark. (50 FR 6072 (Feb. 13, 1985)).

Complainant SMI and the Commission investigative attorney filed written submissions on the issues under review and on the issues of remedy, the public interest, and bonding. No other written submissions or agency comments were received.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930 and in § 210.50–.56 of the Commission's Rules of Practice and Procedure (49 FR 46, 1371 (Nov. 23, 1984); to be codified at 49 CFR 210.50–.56).

Notice of this investigation was published in the **Federal Register** of June 20, 1984 (49 FR 25318).

Copies of the Commission's Action and Order, the Commission Opinion issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: June 20, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15440 Filed 6–26–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–225 through 232 (Final)]

Certain Carbon Steel Products From Austria, Sweden, and Venezuela

AGENCY: International Trade Commission.

ACTION: Scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby announces that a public hearing in connection with the subject investigations will be held beginning at 10:00 a.m. on August 20, 1985.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (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 3, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1985, the Commission instituted the subject investigations and announced that the time and place of the hearing to be held in connection with the investigations would be announced at a later date (50 FR 16164, Apr. 24, 1985). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from May 28, 1985, to August 12, 1985 (50 FR 19767, May 10, 1985). The Commission, therefore, is setting its schedule for the conduct of these investigations to conform with Commerce's new schedule. As provided in section 705(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(2)(B)), the Commission must make its final determination in countervailing duty investigations within 45 days of Commerce's final determination, or in these cases by September 25, 1985.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on July 31, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on August 20, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m. on August 6, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on August 13, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is August 14, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

The hearing in connection with these investigations will be held concurrently with the hearing to be held in connection with the Commission's final antidumping investigations Nos. 731–TA–214, 216, 217, 219, 222 through 224, 226, 228, 229, 234, and 235 (Final) concerning certain carbon steel products from Austria, the German Democratic Republic, Norway, Poland, Romania, and Venezuela.

Written Submissions

All legal arguments, economic analysis, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 27, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 27, 1985.

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 Commission's 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.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions 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 § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15437 Filed 6-26-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-214, 216, 217, 219, 222 through 224, 226, 228, 229, 234, and 235 (Final)]

Certain Carbon Steel Products From Austria, the German Democratic Republic, Norway, Poland, Romania, and Venezuela

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-214, 216, 217, 219, 222 through 224, 226, 228, 229, 234, and 235 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether 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 of the following carbon steel products, which the Department of Commerce has found, in preliminary determinations, are being or are likely to be sold in the United States at less than fair value (LTFV):

Carbon steel plates, whether or not in coils, provided for in item 607.66 of the Tariff Schedules of the United States (TSUS), from—
- The German Democratic Republic [investigation No. 731-TA-214 (Final)],
- Poland [investigation No. 731-TA-216 (Final)], and
- Venezuela [investigation No. 731-TA-217 (Final)]; and

Hot-rolled carbon steel sheets, provided for in TSUS item 607.67 and 606.83, from—
- Austria [investigation No. 731-TA-219 (Final)],
- Romania [investigation No. 731-TA-222 (Final)], and
- Venezuela [investigation No. 731-TA-223 (Final)]; and

Cold-rolled carbon steel plates and sheets, provided for in TSUS item 607.83, from—
- Austria [investigation No. 731-TA-224 (Final)],
- The German Democratic Republic [investigation No. 731-TA-226 (Final)],
- Romania [investigation No. 731-TA-228 (Final)], and
- Venezuela [investigation No. 731-TA-229 (Final)], and

Carbon steel angles, shapes, and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in TSUS item 609.80, from—
- Norway [investigation No. 731-TA-234 (Final)] and
- Poland [investigation No. 731-TA-235 (Final)].

Unless the investigations are extended, Commerce will make its final LTFV determinations on or before August 12, 1985, and the Commission will make its final injury determinations by September 25, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (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 3, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-523-1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain carbon steel products from Austria, the German Democratic Republic, Norway, Poland, Romania, and Venezuela are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on December 19, 1984, by the United States Steel Corp., Pittsburgh, PA, and Chaparral Steel Co., Midlothian, TX. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 6070, Feb. 23, 1985).

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 of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the 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 the investigations must be served on all other parties to the investigations (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.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on July 31, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on August 20, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing

with the Secretary to the Commission no later than the close of business (5:15 p.m.) on August 6, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on August 13, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is August 14, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

The hearing in connection with these investigations will be held concurrently with the hearing to be held in connection with the Commission's final countervailing duty investigations Nos. 701–TA–225 through 232 (Final) concerning certain carbon steel products from Austria, Sweden, and Venezuela.

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business of August 27, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 27, 1985.

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 Commission's 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.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions 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 section 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15438 Filed 6–26–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–196 (Final)]

Certain Red Raspberries From Canada

Determination

On the basis of the record [1] developed in investigation No. 731–TA–196 (Final), the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that an industry in the United States is materially injured [2] by reason of imports from Canada of fresh and frozen red raspberries in containers of a gross weight of over 20 pounds, provided for in items 146.54, 146.56, and 146.74 of the Tariff Schedules of the United States, which are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 18, 1984, following a preliminary determination by the Department of Commerce that imports of red raspberries from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673).

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Rohr has determined that an industry in the United States is threatened with material injury by reason of certain red raspberries from Canada which are being sold in the United States at less than fair value. He has further determined that he would not have found material injury by reason of imports of certain red raspberries from Canada with respect to which the administering authority has made a final affirmative determination but for the suspension of liquidation of entries of that merchandise.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 9, 1985 (50 FR 1136). The hearing was held in Washington, DC, on May 14, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on June 17, 1985. A public version of the Commission's report, *Certain Red Raspberries from Canada* (investigation No. 731–TA–196 (Final), USITC Publication 1707, June 1985) contains the views of the Commission and information developed during the investigation.

Issued: June 17, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15435 Filed 6–26–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–212 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Venezuela

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–212 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether 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 Venezuela of certain circular welded carbon steel pipes and tubes,[1] which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final

[1] For purposes of this investigation, the term "certain circular welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243 610.3252, 610.3254, 610.3256, and 610.4925 of the Tariff Schedules of the United States Annotated (1985) (TSUSA).

LTFV determination on or before August 12, 1985, and the Commission will make its final injury determination by September 30, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (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 3, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain circular welded carbon steel pipes and tubes from Venezuela are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on December 18, 1984, by the Committee on Pipe and Tube Imports. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 5326, February 7, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the 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 this investigation 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 the 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.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on August 5, 1985, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on August 22, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 16, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on August 14, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is August 15, 1985.

Testimony at the public hearing is governed by 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 29, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 29, 1985.

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 Commission's 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.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions 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

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

Issued: June 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15439 Filed 6–26–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–174]

Certain Woodworking Machines; Termination of Investigation; Issuance of General Exclusion Order and Five Consent Orders

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has issued five consent orders, has issued a general exclusion order, and has terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337–TA–174 was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines by reason of alleged unfair acts and practices by Taiwan and U.S. companies. (See 48 FR 55786, Dec. 15, 1983; 49 FR 20767, May 31, 1984.) The complainant was Delta International Machinery Corp. (See 49 FR 23463, June 6, 1984.) The respondents and intervenors included 1 South African company, 29 Taiwan companies, and 21 U.S. companies. Most of the respondents settled with Delta or were dismissed for other reasons.

On February 7, 1985, the presiding administrative law judge (ALJ) issued an initial determination (ID) holding the remaining respondents in default and holding certain respondents in violation of section 337.

On April 1, 1985, the Commission determined to review portions of the ID concerning common-law trademark infringement (i.e., external design appearance marks), patent infringement, misappropriation, definition of the domestic industry, injury, and the alleged violation of section 337 by Taiwan respondent Leroy International Corp. The Commission also determined not to review portions of the ID concerning common-law trademark infringement (the term "Contractor's Saw"), registered trademark infringement, false and deceptive advertising, passing off, efficient and economic operation, default, and the dismissal of two respondents. To supplement the ALJ's discussion of those issue, the Commission adopted certain findings of fact proposed by Delta and the Commission investigative attorney. (See 50 FR 14172, Apr. 10, 1985.)

Between April 22 and 30, 1985, Delta and the Commission investigative attorney filed briefs on the issues under review and on the issues of remedy the public interest, and bonding. Although the Commission solicited written comments from the public and other Federal agencies concerning remedy, the public interest, and bonding (see 50 FR 14172, Apr. 10, 1985), no such comments were received.

On June 17, 1985, upon review of the ID, the record, and the arguments of the parties, the Commission affirmed the ID in part, and held that there is a violation of section 337 of the Tariff Act of 1930 in the importation or sale of certain woodworking machines. The Commission also reversed the ID in part—i.e., with respect to the issue of common-law trademark infringement (design appearance marks). (The Commission determined that there is no violation of section 337 by reason of the infringement of Delta's alleged common-law trademarks in the overall external designs of its 10-inch table saw and 14-inch band saw.) The Commission also determined that there is no violation of section 337 by Taiwan respondent Leroy International Corp.

Commissioners Eckes and Rohr also determined that there is no violation of section 337 in the importation or sale of the accused wood planing machines.

The Commission also determined that the appropriate remedy for the violation of section 337 found to exist in this case is a general exclusion order pursuant to section 337(d) and that public interest considerations do not proclude such reflief. The Commission also determined that, during the Presidential review period provided for in section 337(g), the articles directed to be excluded would be permitted to enter the United States under a bond in the amount of 268 percent of the entered value of the articles.

Between March 28 and April 2, 1985, complainant Delta and the following Taiwan respondents moved to terminate the investigation as to those respondents on the basis of consent orders incorporated into settlement agreements signed by Delta and the following respondents: Formosan United Corporation, Good Will Mercantile Co., Show Soon Enterprises Co., Ltd., Fortune Development Corp., King Feng Fu Machinery Works Co., Ltd., and King Tun Fu Machinery Co. The motions were unopposed.

A notice soliciting written comments on the proposed consent orders was published in the **Federal Register** of May 30, 1985 (50 FR 23085), and was served on other Federal agencies. No comments were received.

Upon review of the consent order motions, the Commission determined that the content of each motion, settlement agreement, and proposed consent order complied with the Commission's rules. The Commission also did not find any indication that the parties' settlements were not in the public interest or that the public would be adversely affected by issuance of the proposed consent orders. The Commission accordingly granted the motions and issued the consent orders.

Termination of respondents Formosan United Corporation, Good Will Mercantile Co., Show Soon Enterprises Co., Ltd., Fortune Development Corp., King Feng Fu Machinery Works Co., Ltd., and King Tun Fu Machinery Co. on the basis of consent orders furthers the public interest by conserving the resources of the Commission and the parties.

Having disposed of all pending matters, the Commission terminated the investigation on June 17, 1985.

Public Inspection

Copies of the consent order motions, the settlement agreements, the consent orders, the nonconfidential version of the ID, the Commission's Action and Order and Commission Opinion in support thereof, as well as all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15436 Filed 6–26–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-13)]

Intrastate Rail Rate Authority; Maryland

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Certification.

SUMMARY: The Commission grants final certification to the Public Service Commission of Maryland under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it modify its standards and procedures as noted in the full decision.

DATE: Certification for the statutory 5-year period will begin on July 29, 1985, subject to the condition precedent that Maryland notifies us within that period that it has made (or if unable to do so within this time, that it will make) the required modifications, and that its modified standards and procedures have been officially and finally adopted.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Bldg., Washington, DC 20423, or call 289–4357

(DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Sternio.

James H. Bayne,

Secretary.

[FR Doc. 85-15387 Filed 6-26-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 25542 (Sub-1)]

Missouri-Kansas-Texas Railroad Co.; Trackage Rights; Fort Worth & Denver Railway Co. (Burlington Northern Railroad Company, Successor in Interest); Exemption

Burlington Northern Railroad Company, successor in interest to Fort Worth & Denver Railway Co., has agreed to continue to grant overhead trackage rights to Missouri-Kansas-Texas Railroad Company between Wichita Falls, TX, and Fort Worth, TX, a distance of approximately 114 miles. The trackage rights renewal will be effective on June 15, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 24, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15549 Filed 6-26-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 24, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if available;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse 202/633-4312

New Collection

(1) Larry E. Miesse, 202/633-4312
(2) Office of Legal Policy, Department of Justice
(3) Judicial peremtory challenge project
(4) None
(5) One time
(6) State and local governments. Information collected will replicate a 1969 study evaluating judicial peremtory challenges in California. Findings will represent part of an evaluation of 16 states providing for these challenges. Questionnaires will be sent to all presiding judges of municipal and superior courts in California, and all Los Angeles superior court judges.
(7) 344 respondents
(8) 344 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Revalidation letter (Immigrant Visa Petition)
(4) I-71
(5) On occasion
(6) Individuals or households. This form is used to determine if petition should be revalidated on behalf of an alien to be employed by petitioner.
(7) 11,000 respondents
(8) 363 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Alien's change of address card
(4) AR-11
(5) On occasion
(6) Individuals or households. Section 265 of the I&N Act requires aliens in the United States to inform INS of any change of address. This form is provided for furnishing such information.
(7) 210,000 respondents
(8) 21,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application by nonimmigrant alien for replacement of arrival document
(4) I-102
(5) On occasion
(6) Individuals or households. Used by an alien to apply for replacement of nonimmigrant arrival document that has been lost, mutilated or destroyed.
(7) 50,000 respondents
(8) 12,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for suspension of deportation
(4) I-256A
(5) On occasion
(6) Individuals of households. Data needed in order to determine eligibility of application for suspension of deportation under Section 244 of the I&N Act (8 U.S.C 1254).
(7) 500 respondents
(8) 500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Certificate of Citizenship
(4) N-600
(5) On occasion
(6) Individuals or households. Information required to determine eligibility for issuance of Certificate or

Citizenship to person claiming to have derived citizenship under Section 314 of the I&N Act (8 U.S.C. 1452).
(7) 210,000 respondents
(8) 21,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Supplemental qualifications statement, Immigration Inspector, GS–5
(4) G–777
(5) On occasion
(6) Individuals or households. Competitive examination for non-status applicants for entry level positions of Immigration Examiner within INS, as delegated by OPM.
(7) 10,000 respondents
(8) 10,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder 202/395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Questionnaire submitted by petitioner at final naturalization hearing
(4) N–445
(5) One-time
(6) Individuals or households. Required to determine petitioner's eligibility for naturalization in order to make appropriate recommendation by INS to the naturalization court.
(7) 240,000 respondents
(8) 20,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Departmental Clearance Officer.

[FR Doc. 85–15384 Filed 6–26–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 18, 1985 a proposed Consent Decree in *Caterpillar Tractor Company* v. *Adamkus, et al.*, Civil Action No. 83–1083 was lodged with the United States District Court for the Central District of Illinois. The proposed Consent Decree concerns control of air pollution at Caterpillar's foundry at Mapleton, Illinois. Under the proposed Consent Decree Caterpillar will permanently reduce the coal-burning capacity of four boilers to comply with the Clean Air Act and pay a civil penalty of $225,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Caterpillar Tractor Company* v. *Adamkus, et al.*, D.J. Ref. 90–5–2–1–600.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of Illinois, Room 253, 100 N.E. Monroe Street, Peoria, Illinois, 61602 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–15405 Filed 6–26–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances; Proposed Revised 1985 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed revised 1985 aggregate production quotas.

SUMMARY: This notice proposes revised 1985 aggregate production quotas for controlled substances in Schedule II of the Controlled Substances Act. Since the establishment of revised 1985 aggregate production quotas on January 22, 1985 (50 FR 2866), DEA has reviewed data submitted by registered manufacturers concerning actual 1984 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

DATE: Comments or objections should be received on or before July 29, 1985.

ADDRESS: Send comments or objections in quintuplicate to Acting Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537 Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year.

This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On January 22, 1985, a notice of the 1985 aggregate production quotas was published in the **Federal Register** (50 FR 2866). Indicated in that notice was that, pursuant to Title 21 of the Code of Federal Regulations, § 1303.23(c), the Administrator of the Drug Enforcement Administration would adjust these quotas in early 1985.

These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1985 and does not include amounts which may be imported for use in industrial processes.

Based upon a review of 1984 year-end inventories, 1984 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the Drug Enforcement Administration by the Food and Drug Administration and other information available to DEA, the Acting Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated by the Acting Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1985 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base:

Schedule II	Previously established 1985 aggregate production quota	Proposed revised 1985 aggregate production quota
Alphaprodine	37,300	29,000
Amobarbital	2,160,000	1,955,000
Amphetamine	574,000	529,000
Codeine (for sale)	54,051,000	54,910,000
Codeine (for conversion)	3,534,000	3,564,000
Desoxyephedrine	1,186,000	(a) 1,324,000
Dextropropoxyphene	75,795,000	81,935,000
Dihydrocodeine	1,341,000	1,223,000
Diphenoxylate	550,000	617,000
Fentanyl	3,500	5,600
Hydrocodone	1,459,000	1,598,000
Hydromorphone	164,000	196,000
Levorphanol	21,750	18,700
Meperidine	7,999,000	9,891,000

Schedule II	Previously established 1985 aggregate production quota	Proposed revised 1985 aggregate production quota
Methadone	1,383,000	1,471,000
Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane)	1,729,000	1,839,000
Methylphenidate	1,260,000	1,361,000
Mixed Alkaloids of Opium	22,300	13,000
Morphine (for sale)	1,142,000	1,310,000
Morphine (for conversion)	56,084,000	58,680,000
Opium (tinctures, extracts, etc., expressed in terms of USP powdered opium)	2,068,000	1,582,000
Pentobarbital	12,482,000	12,041,000
Pethidine Intermediate A	5,112,000	6,058,000
Phenylacetone	800,000	959,000
Secobarbital	2,657,000	2,067,000

(a) 1,174,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 150,000 grams for the production of methamphetamine.

In determining the proposed revised 1985 aggregate production quota for hydromorphone, DEA considered the important legitimate use of hydromorphone as a potent and effective analgesic agent for the treatment of severe pain. In addition, DEA recognizes that it is also a sought after narcotic on the illicit market and has been the subject of considerable diversion from legitimately produced supplies. Because of these factors, DEA is attempting to limit the amount of the drug available for diversion into the illicit traffic while providing for that necessary to meet legitimate medical demand. The proposed increase in the aggregate production quota for hydromorphone has been calcuated taking into consideration 1984 disposals and inventories, the FDA estimate of medical need for 1985 and the requirements of the newly registered bulk and dosage form manufacturers.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by a notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 21, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-15422 Filed 6-26-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-6]

William M. Knarr, D.O., Hearing

Notice is hereby given that on December 28, 1984, the Drug Enforcement Administration, Department of Justice, issued to William M. Knarr, D.O., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AK9326554 and AK9829837, and deny any applications for renewal of such registrations.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m., on Tuesday, July 9, 1985, in Room 225, U.S. Courthouse, 811 Grand Avenue, Kansas City, Missouri.

Dated: June 21, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-15421 Filed 6-26-85; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 11-13, 1985, in Room 1046, 1717 H Street, NW, Washington, D.C. Notice of this meeting was published in the **Federal Register** on June 17, 1985.

The agenda for the subject meeting will be as follows:

Thursday, July 11, 1985

8:30 a.m.-8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.-9:30 a.m.: Report of ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its Subcommittee on Control Room Habitability and the storage and use of high pressure gas and gas distribution systems in nuclear power plants.

9:30 a.m.-10:00 a.m.: Topics for Discussion with the NRC Commissioners (Open)—The members will discuss the ACRS comments and/or review status of items related to consideration of seismic events in emergency planning and proposed NRC quantitative safety goals.

10:00 a.m.-12:00 noon: Meeting with NRC Commissioners (Open)—Members of the Committee will meet with the NRC Commissioners to discuss the items noted above.

1:00 p.m.-3:00 p.m.: Quantitative Safety Goals (Open)—The members will discuss proposed ACRS comments/recommendations to the Commissioners regarding the NRC Staff evaluation of the two-year trial period of proposed nuclear power plant safety goals. Representatives of the NRC Staff will participate as appropriate.

3:00 p.m.-4:30 p.m.: Diablo Canyon Nuclear Plant, Units 1 and 2 (Open)—Members of the Committee will hear and discuss the report of its Subcommittee regarding the proposed seismic reevaluation of the Diablo Canyon Nuclear Plant. Representatives of the NRC Staff and the licensee will participate as appropriate.

4:30 p.m.-6:00 p.m.: Recent Events at Operating Nuclear Plants (Open/Closed)—The members will hear and discuss reports regarding recent operating events and incidents which have occurred at nuclear power plants and a recent steam line failure at a nonnuclear power station.

Portions of this session will be closed as necessary to discuss Proprietary Information.

Friday, July 12, 1985

8:30 a.m.-11:00 a.m.: Watts Bar Nuclear Plant, Units 1 and 2 (Open)—Members of the Committee will hear and discuss the report of the ACRS Subcommittee on Quality Assurance regarding measures taken to evaluate

and correct breakdowns in plant design and construction at this facility. Representatives of the NRC Staff, the applicant, and Black & Veatch, Engineers-Architects, as appropriate.

Portions of this session will be closed as necessary to discuss confidential information the disclosure of which would release investigatory records compiled for law enforcement purposes and would identify a confidential source.

11:00 a.m.–1:00 p.m.: General Electric Standardized Nuclear Power Plant (GESSAR II) (Open/Closed)—Continue the ACRS review and evaluation of this type of standardized nuclear power plant.

Portions of this session will be closed as necessary to discuss Proprietary Information and detailed provisions of plant design regarding safeguards and security safeguards and security measures.

2:00 p.m.–2:15 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

2:15 p.m.–4:15 p.m.: EPA Standards for High Level Waste Repository (Open)—The members will hear and discuss the report of its subcommittee regarding proposed EPA standards for HLW repositories. Representatives of the NRC Staff and the EPA will participate, as appropriate.

4:15 p.m.–6:15 p.m.: Quantitative Safety Goals (Open)—The members will continue their discussion of proposed ACRS comments/recommendations to the NRC regarding proposed NRC quantitative safety goals for nuclear power plants.

Saturday, July 13, 1985

8:30 a.m.–12:30 p.m. ACRS Reports to NRC (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting. In addition, proposed ACRS reports regarding PRA assessment of the Indian Point Nuclear Station and the security of nuclear power plants will be discussed.

Portions of this sesssion will be closed as necessary to discuss Proprietary Information, detailed security information, and information involved in an adjudicatory proceeding.

1:30 p.m.–3:00 p.m.: ACRS Subcommittee Activities (Open)—The members will hear and discuss reports of designated subcommittees regarding ongoing activities related to long-range planning for NRC activities, use of natural aptitude testing for selection and evaluation of nuclear power plant operators, and emergency core cooling systems testing facilities.

3:00 p.m.–3:30 p.m.: Activities of ACRS Members (Open/Closed)—Discuss activities of ACRS members as nongovernment employees.

Portions of this session will be closed as necessary to discuss information the release of which would represent an unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statement. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meeting may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss National Security Information (5 U.S.C. 552b(c)(1)), Proprietary Information (5 U.S.C. 552b(c)(4)), detailed security information (5 U.S.C. 552b(c)(3)), investigatory records compiled for law enforcement purposes or information which if written would be contained in such records to the extent that production of such information would disclose the identify of a confidential source (5 U.S.C 552b)c)(7)), to discuss information that will be involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), and to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m and 5:00 p.m. e.d.t.

Dated: June 21, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–15441 Filed 6–26–85; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Statement Regarding Adoption
(2) Form(s) submitted: G–118
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 600
(7) Annual reporting hours: 150
(8) Collection description: Equitably adopted children of railroad workers may qualify for benefits under the RR Act. The collection obtains the information needed to establish equitable adoption when no legal adoption has occurred.

Summary of Proposal(s):

(1) Collection title: Certification of Relinquishment of Rights
(2) Form(s) submitted: G–88
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 4,500
(7) Annual reporting hours: 375
(8) Collection description: Under Section 2(e)(2) of the Railroad Retirement Act, the Board must have evidence that an

applicant for an employee, spouse or divorced spouse annuity has relinquished rights to return to employer service as a condition for receiving an annuity. The collection provides the means for obtaining this evidence.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–15471 Filed 6–26–85; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–23737; 70–7112]

The Columbia Gas System, Inc., and TriStar Gas Marketing, Inc.; Proposed Intrasystem and Bank Financing by Subsidiary Company

June 21, 1985.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its newly organized subsidiary company, TriStar Gas Marketing, Inc., ("TriStar"), 1600 Dublin Road, Columbus, Ohio, have filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

TriStar was organized under the laws of Delaware on April 22, 1985, and its authorized capital is $20 million, consisting of 800,000 shares of common stock $25 par value per share. TriStar does not have any issued securities or outstanding capital. It is stated that the availability of deregulated gas and the general surplus of gas supplies in general over the last few years have created a growing spot market which was virtually non-existent two years ago. TriStar would participate in this new aspect of the natural gas industry by offering both local distribution companies and end-use customers an array of marketing services related to the acquisition, sale, exchange, and transportation of a variety of spot market and other gas supplies. It would be staffed with a group of full-time employees who possess experience and expertise in gas marketing, transportation and exchange, procurement, finance, and law. The initial staff would total 10–15 personnel inclusive of clerical and secretarial support. Accounting and other services would be procured through the System Service Corporation or, if not available there, through outside contractors. TriStar may sell spot market gas to Columbia's distribution subsidiaries, but it will not provide services to nor act as an agent for the distribution companies for a fee without prior approval of this Commission.

For initial start-up costs and capital needs, it is estimated that TriStar will require up to $5 million. It proposed that these funds be provided by the isssuance and sale by TriStar, and the acquisition by Columbia, of up to 200,000 shares of TriStar common stock par value $25 per share for a total initial capital of $5,000,000.

In addition, TriStar may require short-term funds of up to $15 million for the purpose of purchasing gas on the spot market for resale to end-users or local distribution companies. Accordingly, TriStar proposes to issue and sell up to $15 million of short-term notes outstanding at any one time to commercial lenders. The notes will be for a term not in excess of 360 days and will bear interest at a rate not in excess of the prime rate in effect at the commercial lender at the time of the issuance of each note. Columbia proposes to guarantee such notes if necessary.

Finally, Columbia proposes to make open account advances of up to $15 million to TriStar, provided, however, that the open account advances will not be made if TriStar can borrow funds from non-affiliated lenders on reasonable terms with Columbia's guarantee. If made, the advances will bear interest at a rate equal to Coumbia's effective cost of short-term funds and will be repaid as gas is sold, but in any event, no later than 360 days following the date of the advance.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 15, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–15393 Filed 6–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14589; 812–6119]

E.F. Hutton & Company, Inc., et al.; Application for an Order Exempting Applicant

June 21, 1985.

Notice is hereby given that E.F. Hutton & Company, Inc. ("Hutton") registered with the Commission as an investment adviser and a broker-dealer, and Hutton Investment Trust, Convertible Unit Trust, Series 1 and Subsequent Series (A Unit Investment Trust) ("Trust", and together with Hutton, "Applicants"), One Battery Park Plaza, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on May 20, 1985, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from compliance with the provisions of Sections 14(a) and 19(b) of the Act, and Rule 19b–1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

The investment objective of the Trust is capital appreciation and generation of current income through investment in a portfolio of convertible securities, including both debt and equity instruments. Hutton is the sponsor of the Trust, and will serve as its depositor. The convertible bonds to be held by the Trust, and will have maturities ranging from two to four years from the date of their deposit into the Trust. Convertible preferred stocks in the portfolio will have no stated maturity, but may be

subject to a sinking fund for optional refunding redemptions. Applicants state that the conversion or exchange feature of these convertible securities will only be exercised under limited circumstances, and that Bank of New England, N.A., as trustee ("Trustee") will immediately dispose of any common stocks received as a result of such conversion.

It is stated further that the Trust will be created under the laws of Massachusetts pursuant to a trust agreement entered into between Hutton, as sponsor, and the Trustee. Hutton is to be the sole underwriter of the Trust's units of beneficial interest ("Units"). In forming the Trust, Hutton intends to deposit convertible securities and receive therefor a certificate for Units representing the entire ownership of the Trust. Each Unit will respresent a fractional undivided interest in the Trust. When Units are redemed by the Trustee the fractional interest in the Trust represented by each unredeemed Unit increases, but the net asset value of that interest is not affected.

As sponsor of the Trust, Hutton may maintain a secondary market for Units by continuously offering to purchase Units at their current net asset value. However, Hutton is free to terminate such market-making at any time, without notice, and in the event of such termination, a Unitholder desiring to dispose of Units may tender such Units to the Trustee for redemption, also at their current net asset value.

It is expected that the Trust will be terminated between two and four years from the date portfolio securities are deposited. Additionally, the Trust may be terminated by the Trustee, or, upon direction to the Trustee by Hutton, at any time that the value of the convertible securities, as determined by the Trustee, is below 50% of the aggregate value of the shares deposited in the Trust on the date of deposit. However, in no event may the existence of the Trust continue beyond the mandatory termination date.

Exemptive relief from the provisions of Section 14(a) of the Act is sought to the extent that such provisions would require Hutton, as the sponsor of the Trust, in forming the Trust and offering Units to the public, to take for its own account, or place privately with no more than 25 other persons, $100,000 or more of Units under investment letters. Applicants submit that the purpose of Section 14(a) of the Act is to assure that investment companies are adequately capitalized prior to the sale of their securities to the public. It is represented that on the date the Trust's portfolio securities are deposited, the Trust will have a net worth, represented by the value of the underlying securities, far in excess of $100,000. Therefore, requiring the Sponsor to invest $100,000 or more in Units under an investment letter which represents that such purchases are for investment and not for resale to the public (or to make a private placement to outside parties) is not necessary for protection of Unitholders, but will only increase the cost to Hutton of forming the Trust and marketing Units.

Applicants further note, however, that the Commission has construed Section 14(a) of the Act as requiring that the initial capital investment in an investment company be made with the absence of any intention of redeeming or disposing of the investment. Moreover, it is noted that with regard to unit investment trusts, the Commission has expressed the view that, although a sponsor may deposit more than $100,000 principal amount of securities in a unit trust, it will not have made a bona fide investment if it intends to market the beneficial interests in the trust it receives from the trustee and reduce to zero its own capital investment. The Commission's position in this respect has not, however, been without exception, as the Commission has over the years provided exemptive relief from Section 14(a), based on conditions designed to ensure that purchasers of unit investment trust interests receive their pro rata share of the net worth of such trusts, as well as refunds of sales charges where the trusts fail to become going concerns. The terms of such individual exemptive orders have been codified, it is stated, in Rule 14a–3 under the Act—an exemptive provision which would be applicable to Applicants but for the fact that the Trust will not be investing exclusively in "eligible trust securities" as defined in the Rule. It is asserted that this restriction in Rule 14a–3 reflects the Commission's lack of administrative experience with unit trusts that invest in other types of portfolio securities.

As additional protection for Unitholders, Hutton agrees as a condition to the requested exemption that it will liquidate the portfolio investments of the Trust and distribute the proceeds thereof on demand, without deduction of sales charges, to Unitholders, if, within 90 days from the effective date of the registration statement relating to the Units under the Securities Act of 1933 ("Securities Act"), the net worth of the Trust shall have been reduced to less than $100,000, or if the Trust shall have been terminated. Hutton further agrees to instruct the Trustee to terminate the Trust in the event redemption by Hutton of Units which have not been sold in the initial distribution thereof results in the Trust having a net worth below 40% of the value of its portfolio securities on the date of their deposit, and to refund, in the event of any such termination, on demand and without deduction, all sales charges to purchasers of Units.

Applicants further represent that income received by the Trust (less amounts required for payments of expenses) will be distributed on a monthly basis. Distributions of capital gains to Unitholders are likely to be made only when:

(1) An issuer calls or redeems securities held by the Trust;

(2) Securities are sold by the Trust to provide funds to meet redemptions or expenses;

(3) Securities are sold to maintain qualification of the Trust as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1954;

(4) There are regular distributions of principal and prepayment of principal on securities;

(5) Market, revenue, or credit factors have occurred, such that in the opinion of Hutton there is a serious question as to the fundamental economic viability of the issuer, or its ability to continue payments of principal, interest, or dividends;

(6) There has been a default in the payment of principal, or interest, or a failure of the issuer to declare or pay an anticipated dividend;

(7) Securities are sold upon the failure of the issuer to make a scheduled sinking fund payment; or,

(8) An action, or proceeding, has been instituted in law or equity seeking to restrain or enjoin the payment of principal, interest, or dividends on such securities.

Applicants also seek exemptive relief from the provisions of Section 19(b) of the Act, and Rule 19b–1 thereunder, to permit the Trust to make more than one distribution of capital gains in any one taxable year.

Applicants submit that Rule 19b–1 was designed to remove the temptation to realize capital gains on a frequent and regular basis, *i.e.*, to "churn" the portfolio. Applicants further submit that Rule 19b–1 also was designed to eliminate attempts by an investment company's investment adviser to time distributions in a manner designed to be advantageous to particular shareholders, and to mitigate improper sales practices related to the distribution of such gains. However, Applicants state that rule 19b–1 does allow for distributions constituting capital gains to be made more

frequently than once per taxable year by unit investment trusts investing exclusively in "eligible trust securities" as defined in Rule 14a-3(b) under the Act, in certain situations. Applicants further state that in each such situation, the events which give rise to the capital gains distribution are substantially independent of any action by the trust sponsor, or trustee. Applicants contend that this exception in Rule 19b–1 would be available to Applicants were its coverage not limited to unit investment trusts investing exclusively in "eligible trust securities". The circumstances under which the Trust would make capital gains distributions are likewise substantially independent of any action by Hutton or the Trustee. As stated, sales of the Trust's securities will only be made to cover redemptions and expenses, to maintain Subchapter M qualification, or to maintain the "investment stability" of the Trust.

It is also noted that paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. Applicants state that the purpose behind this provision is to avoid forcing a unit investment trust to accumulate distributions received throughout the year until year end, and that the operations of the Trust in this regard fall precisely within that purpose.

Applicants assert further that the dangers against which Rule 19b-1 is intended to guard do not exist in the case of the Trust since events which might give rise to to capital gains, such as the tendering of units for redemption, and market or credit factors, will be substantially independent of any action by Hutton or the Trustee. Applicants further assert that the regular distribution per Unit will be fairly constant within a specified range, and that a return of capital, or a capital gains distribution, would be clearly distinguished from income distributions in the report by the Trustee to Unitholders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–15399 Filed 6–26–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14590; (811–1943)]

Fundpack, Inc.; Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

June 21, 1985.

Notice is hereby given that Fundpack, Inc. ("Applicant"), c/o Beasley, Olle & Soto, Southeast Financial Center, 200 South Biscayne Boulevard, Miami, FL 33131–2395, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 7, 1985, for a Commission order pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicant states that its board of directors adopted a plan of liquidation and dissolution ("Plan") which was approved by Applicant's shareholders on March 10, 1980. According to the application, pursuant to the Plan, Applicant has distributed to its shareholders their proportionate share of its liquidation proceeds. Applicant states further that it now has no assets, security-holders, debts or outstanding liabilities remaining and is not now a party to any litigation or administrative proceeding. In addition, Applicant represents that it is not now engaged, nor proposes to engage, in any business activities other than those necessary to wind up its affairs. Applicant also represents that it no longer legally exists and is a legally dissolved corporation under the laws of the State of Florida.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–15396 Filed 6–26–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14592; (811–2468)]

Holding Trust; Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

June 21, 1985.

Notice is hereby given that Holding Trust ("Applicant"), c/o Beasley, Olle & Soto, Southeast Financial Center, 200 South Biscayne Boulevard, Miami, FL 33131–2395, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 7, 1985, for a Commission order pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicant states that its board of directors adopted a plan of liquidation and dissolution ("Plan") which was approved by Applicant's shareholders on March 10, 1980. According to the application, pursuant to the Plan, Applicant has distributed to its shareholders their proportionate share of its liquidation proceeds. Applicant states further that it now has no assets, security-holders, debts or outstanding liabilities remaining and is not now a party to any litigation or administrative proceeding. In addition, Applicant represents that it is not now engaged, nor proposes to engage, in any business activities other than those necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15400 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14591; (811-2757)]

Holdings of U.S. Government Securities, Inc., Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

June 21, 1985.

Notice is hereby given that Holdings of U.S. Government Securities, Inc. ("Applicant"), c/o Beasley, Olle & Soto, Southeast Financial Center, 200 South Biscayne Boulevard, Miami, FL 33131-2395, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 7, 1985, for a Commission order pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicant states that its board of directors adopted a plan of liquidation and dissolution ("Plan") which was approved by Applicant's shareholders on March 10, 1980. According to the application, pursuant to the Plan, Applicant has distributed to its shareholders their proportionate share of its liquidation proceeds. Applicant states further that it now has no assets, security-holders, debts or outstanding liabilities remaining and is not now a party to any litigation or administrative proceeding. In addition, Applicant represents that it is not now engaged, nor proposes to engage, in any business activities other than those necessary to wind up its affairs. Applicant also represents that it no longer legally exists and is a legally dissolved corporation under the laws of the State of Florida.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15395 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23739; 70-7119]

Middle South Utilities Inc.; Proposed Guaranty by Holding Company of Subsidiary Service Company's Performance Under Computer Leasing Agreement

June 21, 1985.

Middle South Service, Utilities Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

Middle South Services ("Services"), a subsidiary service company of Middle South, intends to enter into a new computer equipment leasing arrangement with a lessor to be selected ("Lessor") with respect to an IBM 3090 computer system and related equipment ("Computer System") for use by Services at its data processing center in Gretna, Louisiana. Services is in the process of requesting lease proposals from leasing companies and intends to select the Lessor that will provide Services with the best overall terms for the leasing of the Computer System. Neither the Lessor nor any persons affiliated with the Lessor will be affiliated with Services or any of its affiliated entities.

To effectuate this transaction, Middle South proposed to guarantee the performance by Services of its lease obligations without recourse to Services first being required.

The Lessor will purchase the Computer System from International Business Machines Corporation ("IBM") at the IBM purchase price estimated at approximately $6,285,492 and, concurrently lease the Computer System to Services. The leasing arrangements will be covered by a Lease Agreement ("Lease") to be entered into between the Lessor and Services.

The Lease will be a net lease conferring responsibility for operation, maintenance and various other expenses upon Services. Services will be obligated to maintain the Computer System in good working condition, normal wear and tear excepted. The Lease will be non-cancellable through the initial term thereof, which is contemplated to be approximately 48 months ("Initial Term"), except in the event of: (a) irreparable damage, loss or destruction of the Computer System; or (b) default by Services thereunder. In the event that Services elects not to extend the Lease term for an additional period beyond the expiration of the Initial Term, Services may be required (1) to guarantee that the Computer System will have a residual value at the expiration of the Initial Term of at least a specified percentage of the IBM list price therefor as of the commencement of the Lease term ("IBM List Price") and (2) to pay the Lessor, at the expiration of the Initial Term, the amount, if any, by which such residual value is determined to be less than such specified percentage of the IBM List Price.

Monthly rental payments by Services for the Computer System during the Initial Term are estimated not to exceed $150,000, with payments beginning upon commencement of the Lease. Lease payments may be adjusted in the event that, under certain circumstances, the Lessor loses certain tax benefits incident to its ownership and leasing of the Computer System. Services intends to treat the Lease under applicable accounting principles as an operating lease and to charge the payments thereunder to operating expense.

Services may also lease from the Lessor model upgrading for the Computer System. The Lessor would purchase the model upgrading at the IBM purchase price, presently estimated at approximately $5,994,000, and concurrently lease the model upgrading to Services, under leasing arrangements coterminous with the Lease of the Computer System. Monthly rental payments by Services for the model upgrading would be expected not to exceed $175,000. Services may be required to guarantee with respect to the model upgrading a residual value of a specified percentage of the IBM list price in the same manner as provided for in the Lease of the related Computer System. Middle South proposes to guarantee these model upgrading lease obligations without recourse to Services' first being required.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 15, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley L. Hollis,

Assistant Secretary.

[FR Doc. 85-15398 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23740; 70-6784]

National Fuel Gas Co. Proposal To Acquire Stock in a Newly Formed Subsidiary

June 21, 1985.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10, 11, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 thereunder.

National proposes to purchase 100% of the outstanding stock of Highland Land and Minerals, Inc. ("Highland"), a Pennsylvania corporation. Highland has 4,500 shares of common stock authorized and outstanding, with a purchase price of $450,000, which National proposes to purchase in cash. Highland has entered into an agreement, subject to Commission approval, to purchase real property together with all buildings and impovements thereon presently owned by Rose Maljovec and equipment and other assets presently owned by Maljovec Lumber Co., Inc. The purchase price of the real property is $75,000. The purchase price of the equipment and the other assets is $240,000. Maljovec Lumber Company, Inc. ("Maljovec") presently operates a sawmill which produces approximately 2,500,000 board feet of timber per year and has approximately 6 employees. The sawmill operation is located on approximately 20 acres of land. National and its subsidiaries are familiar with this sawmill, having had their timber sawed there in the past and feel that the fair market value of the land, equipment and buildings exceeds the purchase price of $315,000.

It is stated by National that the acquisition of the stock of Highland, and the operation of a sawmill will complement their existing system which presently owns 93,000 acres of timerlands, produces 3,500,000 board feet of timber yearly, and is located in twelve countries in northwestern Pennsylvania and two in New York countries.

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 12, 1985, to the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15395 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22162; File No. SR-Amex-85-18]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Change Relating to Exchange Rule 175; Specialist Hedging Transactions in Listed Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1985, the American Stock Exchange, Inc. ("Amex") 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 Amex. 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 Amex is proposing to amend Exchange Rule 175 to permit specialists to use listed options, within specified guidelines, to hedge their underlying specialty stock positions in order to offset market making risk.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* Amex Rule 175(a) prohibits specialists and their associated persons from directly or indirectly acquiring, holding, or granting options on the specialists' specialty stocks. The purpose of the proposed rule

change is to amend the Rule to allow specialists to grant, acquire and hold, in their specialist accounts, positions in listed options on their specialty stocks where appropriate to offset the risk of making a market in the underlying stocks.[1]

In February, 1985, the Commission gave final approval to a New York Stock Exchange ("NYSE") proposal to permit NYSE specialists to use listed options to hedge their specialty stock positions, within specified guidelines, to offset market making risk.[2] The Commission found that substantial benefits to the markets for the specialists' specialty stocks and possibly to the markets for the options themselves, were likely to accrue and that the NYSE's proposal adequately addressed the possible regulatory concerns raised by the various commentators, including the Amex.[3]

The Amex believes that the amended NYSE rule as approved by the Commission provides an adequate regulatory basis for a similar Amex rule change, and the Amex specialists should therefore have the ability to hedge in options on the same basis as NYSE specialists. Removal of the prohibition would place Amex specialists on a more competitive playing field, moreover, with regional and third market makers who are permitted to trade options on the stocks in which they make public markets. By reducing the risk on positions specialists are required to assume pursuant to their market making responsibilities, rescission of the prohibition could also enable Amex specialists to take larger positions in their specialty stocks than they might otherwise assume, thereby potentially adding to the liquidity and depth of Amex markets.[4]

[1] The Exchange also proposes to rescind the prohibition of Rule 175 as it applies to approved persons, limited partners, officers, and employees of specialists' member organizations to allow those persons to use options on specialists' specialty stocks, subject to the same restrictions as would be imposed on specialists by the proposed rule change. Associated persons, however, would not be limited to options positions that offset market making risks, but would be required to comply with the hedge ratios and other requirements set forth in the Guidelines for Specialist's Specialty Stock Options Transactions Pursuant to Rule 175 (the "Guidelines").

[2] See order Approving Proposed Rule Change, Securities Exchange Act Release No. 21710, February 4, 1985.

[3] See letters from Robert J. Birnbaum, President, and Richard O. Scribner, Executive Vice President, to George A. Fitzsimmons, Secretary, SEC, dated October 4, 1983 and April 16, 1984, respectively.

[4] Removal of the prohibition would effect 24 Amex stocks as to which options are traded either on U.S. or Canadian exchanges.

The proposed rule change, while maintaining the general prohibition on options trading by stock specialists, would create an exception where it is appropriate for the specialist to acquire a listed options positions to offset the risk of making a market in the underlying security. Proposed Rule 175 specifies that a specialist may not hold a position in a listed option which is "excessive", as defined by specified "hedge ratios", in terms of either the specialist's existing position in the underlying specialty stock or a reasonable estimate of potential loss in an existing specialty stock position. Options transactions would only be permitted in accordance with the Guidelines. The proposed Guidelines are essentially identical to the NYSE's guidelines which are currently in effect.

The Exchange believes that approval of the proposed rule change is warranted in light of the competitive considerations and the potential market benefits that would be derived, and in light of the Commission's finding that the NYSE rule change adequately addressed the Commission's regulatory concerns.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed rule change, by enhancing market quality, is designed to perfect the mechanism of a free and open market, and by removing a barrier to fair competition, promotes the objective of the Section which states that the rules of an exchange should not permit unfair discrimination between brokers or dealers. The proposed rule change also furthers the purposes of Section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed rule change will impose no burden on competition. Rather, the proposed rule change will enhance competition by placing Amex specialists on a more even footing with NYSE, regional and third market makers who may currently trade options on the stocks in which they make markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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 propposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, 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 made available for inspection and copying in the Commission's Public Reference Room, 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 Amex. All submissions should refer to (File No. SR-Amex-85-18) and should be submitted by July 18, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 21, 1985

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15402 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22161; File No. SR-NASD-85-11]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mutual Fund Quotation Program

Pursuant to Section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

that on May 24, 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 Association proposes to amend Schedule D of its By-laws to provide that data pertaining to the value of mutual funds and yields of money market funds is collected and disseminated through the NASDAQ System's central computers under the Mutual Fund Quotation Program.

Funds meeting stated size and shareholders criteria shall be included in the News Media Lists. Funds not meeting these criteria but having at least 300 shareholders shall be included in the Supplemental List, and price information will be disseminated to NASDAQ Level 1 venders.

Funds participating in the program will be assessed $150 per year if included on the Newspaper List and $100 per year if included only in the Supplemental List. Neither subscribers to this information nor Level 1 vendors will be assessed a charge for receipt of this information.

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 tyhe purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

For many years, the Association has collected and disseminated to the news media the net asset value of mutual funds, and more recently, the average yields of money market funds. The proposed amendments to Schedule D will allow the NASD to improve the speed, accuracy and completeness of the collection and dissemination of mutual fund information by providing an automated quotation system.

This proposed rule change is consistent with the Association's statutory obligations under Section 15A(b)(11) which requires that the rules of the Association promote orderly procedures for collecting, distributing and publishing quotations relating to securities sold otherwise than a national securities exchange, and with the requirements under Section 15(A)(b)(5) that the rules of the Association provide for the equitable collection of reasonable dues, fees and other charges among members, issuers and other persons using a facility or system which the Association operates and controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will 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 neither solicited nor received.

III. Date of Effectiveness of 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 Fifth Street NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. 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 18, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 21, 1985.

[FR Doc. 85-15394 Filed 6-26-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-049]

National Boating Safety Advisory Council; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Secretary of Transportation on rulemaking matters related to recreational boating.

Seven members will be appointed as follows: Two (2) members from the recreational boating industry; three (3) members from the State Boating Administrators; and two (2) members from boating organizations and the public.

To achieve the balance of membership required by the Federal advisory Committee Act, the Coast guard is especially interested in receiving applications from minorities and women. The Council normally meets twice each year, once in the Washington, D.C. area, and once at another location selected by the Coast Guard.

DATE: Requests for applications should be received no later than August 10, 1985.

ADDRESS: Persons interested in applying should write to Commandant (G-BBS), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Commander A. Rozumny, Acting

Executive Director, National Boating Safety Advisory Council (G-BBS) Room 4308, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593; (202) 426-1060.

Dated: June 17, 1985.

L.C. Kindbom,

Captain, U.S. Coast Guard Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 85-15413 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Airway Science Demonstration Grants

Correction

In FR Doc. 85-13815 appearing on page 24340 in the issue of Monday, June 10, 1985, make the following correction:

In the second column, twenty-second line, "$400,000.00" should have read "$4,000,000.00".

BILLING CODE 1505-01-M

Research and Special Programs Administration

[Docket No. 85-2W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver

Transcontinental Gas Pipe Line Corporation (Transco) has petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the requirements of 49 CFR 192.553(d) to permit the maximum allowable operating pressure (MAOP) of seven pipeline segments located in Somerset and Morris Counties, New Jersey (totaling eight and seven-tenths (8.7) miles) to be increased to 800 psig from the current 722 psig. These segments, which are in location Class 3, are part of a pipeline designated by Transco as the 36-inch Caldwell Lateral which is approximately 22.83 miles in length (MP 1789.53 to 1812.36). There is a need to increase the operating pressure of this pipeline segment to 800 psig due to anticipated swings in Transco's customers' delivery volume requirements. Transco estimates that replacement of the 8.7 miles of 36-inch pipeline involved would cost $13,000,000 if the waiver is not granted.

This pipeline extends from Transco's Compressor Station 505 to Transco's Caldwell Regulator Station and consists of 36-inch OD x .500 W.T. API 5LX 52 pipe. Transco states the coating is in good condition, and the line has been under cathodic protection since shortly after original construction in 1959 and has been maintained at acceptable levels since that time. According to the petition, there have been no leaks or failures since Transco began keeping such records in 1970, and there are no shorted casings.

The subject pipeline, which serves Transco's eastern market area in New Jersey and New York, was constructed in 1959 under a permit from the New Jersey Public Utility Commission. The design and construction of this line was in accordance with New Jersey Administrative Order 14:295. This order adopted the American Standard Code for Pressure Piping, ASA B31.1.8-1955. However, on February 17, 1959, this Administrative Order was amended, and although the ASA B31.1.8-1955 was still referenced, the classification of systems was quite different than under the B31.1.8-1955 code. As a result, Transco was unable to classify any part of its gas pipeline in New Jersey to operate at a stress level in excess of 50 percent of SMYS (0.50 Design Factor). A waiver for the subject pipeline was not sought from New Jersey even though the planning, design, and material ordering were done for an 800 psig MAOP prior to the effective date of the order.

A recent examination of overflight contact prints made in 1958 was made by Transco to determine the class locations of the pipeline at the time of the original construction. The 1958 overflight indicated the pipeline had no Class 3 locations as defined by ASA B31.1.8-1955 Code.

A 1984 actual house count indicates that the 22.8 miles of pipeline in this section there are 8.7 miles of Class 3 location, approximately 0.75 miles of Class 2 location, and approximately 13 miles of Class 1 location.

The original hydrostatic test was conducted to 1.5 times the operating pressure. On questioning Transco, MTB determined that the 1959 hydrostatic test was run in two segments, both of which were held under test pressure for at least 24 hours. The segment between MP 1789.53 and 1804.26 was tested to a minimum pressure (at the high point) of 1080 psig (74.8 percent SMYS) and the segment between MP 1804.26 and 1812.36 at a minimum of 1086 psig (75.2 percent SMYS). Using these test pressures and a design factor, F=0.50, as was required by the State of New Jersey Administrative Order 14:295, as amended February 17, 1959, the allowable operating pressure permitted in New Jersey was established at 722 psig. When the Federal gas pipeline safety standards (49 CFR Part 192) were adopted, this value also became the MAOP under Part 192 in accordance with § 192.619(a)(3), which limits MAOP to the highest actual operating pressure during the 5 years before July 1, 1970.

In contrast, had the pipeline been in any part of Transco's system outside New Jersey, it would have met the B31.1.8-1955 requirements for an MAOP of 864 psig, based on a design factor, F=0.60, permitted in Class 2 locations. Thus, it would have been operated at 800 psig, as were similarly designed and located pipelines outside New Jersey, and would have qualified for an 800 psig MAOP under § 192.619(a)(3). Consequently, in areas with a subsequent change in class location to Class 3, the 800 psig MAOP could be maintained by pressure testing now to 90 percent SMYS under § 192.611(c).

Section 192.553(d), Limitation on increase in maximum allowable operating pressure in uprating, reads as follows:

> Except as provided in § 192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location.

Without a waiver, this standard restricts Transco to operation at 722 psig due to the 0.5 design factor applicable to new pipelines of like materials in Class 3 locations. The rule presents operators from uprating the MAOP of existing pipelines to what might be dubious or unsafe design pressures. The restriction seems unreasonable in this case; however, because the original test and design qualified this line for more than the desired 800 psig MAOP under current part 192 standards, and if it were not for the 722 psig limit set by New Jersey in Class 2 areas, the line could have been operating at 800 psig, as are other similarly designed and located Transco pipelines. MTB is considering granting Transco a waiver from § 192.553(d) to permit uprating to an MAOP of 800 psig. Transco could then qualify the pipeline in the 8.7 miles of Class 3 Locations for the desired 800 psig MAOP by confirming this NAOP for class 3 areas with a 90 percent SMYS hydrostatic test as permitted by § 192.611(c), assuring an equivalent level of pipeline safety. Transco states in the petition that it will hydrostatically test the entire subject pipeline to over 90 percent SMYS.

Interested persons are invited to comment on the proposed waiver by submitting in triplicate such data, views, or arguments as they may desire. Communications should identify the Docket and Notice numbers and be submitted to: Dockets Branch, Room 8426, Materials Transportation Bureau,

Department of Transportation, Washington, D.C. 20590.

All comments received before July 29, 1985 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for inspection at the Dockets Branch, Materials Transportation Bureau, between the hours of 8:30 a.m. to 5:00 p.m., before and after the closing date for comments. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

(49 U.S.C. 1672; 49 CFR Part 1.53(a); Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on June 21, 1985.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85-15404 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 24, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. Law 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC. 20220.

Internal Revenue Service

OMB Number: 1545-0052
Form Number: IRS Forms 990-PF and 4720
Type of Review: Extension
Title: Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation (990-PF); and Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code (4720)

OMB Number: 1545-0129
Form Number: IRS Form 1120-POL
Type of Review: Revision
Title: U.S. Income Tax Return for Certain Political Organizations

OMB Number: 1545-0148
Form Number: IRS Form 2758
Type of Review: Extension
Title: Application for Extension of Time to File U.S. Partnership, Fiduciary, and Certain Exempt Organization Returns

OMB Number: 1545-0175
Form Number: IRS Form 4626
Type of Review: Extension
Title: Computation of Minimum Tax—Corporation

OMB Number: 1545-0188
Form Number: IRS Form 4868
Type of Review: Extension
Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-15484 Filed 6-26-85; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 124
Thursday, June 27, 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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 5, 1985.

PLACE: 2033 K Street, NW., Washington, D.C. 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–15584 Filed 6–25–85; 3:12 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 12, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–15585 Filed 6–25–85; 3:12 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 19, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–15586 Filed 6–25–85; 3:12 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 26, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–15587 Filed 6–25–85 3:12 pm]

BILLING CODE 6351-01-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 4:23 p.m. on Friday, June 21, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Urbana Savings Bank, Urbana, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, June 21, 1985; (2) accept the bid for the transaction submitted by Peoples Bank and Trust Company, Cedar Rapids, Iowa, a State member bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:30 p.m., and at 6:37 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First City Bank, National Association, Oklahoma City, Oklahoma, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, June 21, 1985; (2) accepted the bid for the transaction submitted by City Bank & Trust, Oklahoma City, Oklahoma, a newly-chartered State nonmember bank; (3) approved the applications of City Bank & Trust, Oklahoma City, Oklahoma, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in First City Bank, National Association, Oklahoma City, Oklahoma, and for consent to exercise trust powers; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of the Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 15623 Filed 6–25–85; 4:10 pm]

BILLING CODE 6714-01-M

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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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 1, 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.

Application for Federal deposit insurance:

First American Bank and Trust, Inc., a proposed new bank to be located at 7795 Dorchester Road, North Charleston, South Carolina.

Application for Federal deposit insurance for a state licensed branch of a foreign bank:

Korea Exchange Bank, Seoul, Republic of Korea, for Federal deposit insurance of deposits received at and recorded for the accounts of its branch to be located at 39 Garden Plaza, 139-40 39th Avenue, Flushing, New York.

Applications for consent to purchase assets and assume liabilities and establish eleven branches:

Equibank, Latrobe, Pennsylvania, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in four Philadelphia, Pennsylvania, and one Wayne, Pennsylvania, branches of First Pennsylvania Bank N.A., Bala-Cynwyd, Pennsylvania, for consent to purchase certain assets of and assume the liability to pay deposits made in six Philadelphia, Pennsylvania, branches of Atlantic Financial Federal, Bala-Cynwyd, Pennsylvania, a non-FDIC-insured institution, and for consent to establish those eleven offices as branches of Equibank.

Memorandum regarding the leasing of additional office space in New York City.

Memorandum regarding guidelines for the Division of Liquidation for writing off assets.

Reports of committees and officers:

Minutes of actions approved by the standing committees 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 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-15526 Filed 6-25-85; 11:52 am]

BILLING CODE 6714-01-M

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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 Monday, July 1, 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 items be moved to the discussion agenda.

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

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:

Applications for Federal deposit insurance and for consent to merge and establish five branches:

United Savings Bank, Manchester, New Hampshire, a proposed new bank, for Federal deposit insurance, for consent to merge, under its charter and title, with United Federal Bank, FSB, Manchester, New Hampshire, a non-FDIC-insured institution, and for consent to establish the five branches of United Federal Bank, FSB as branches of the resultant bank.

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 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-15527 Filed 6-25-85; 11:52 am]

BILLING CODE 6714-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 24873 6/13/85) (50 FR 25512 6/19/85).

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: June 10, 1985; June 14, 1985.

CHANGE IN THE MEETING: Additions/Deletions.

The following item was considered at a closed meeting held on Monday, June 17, 1985, at 1:30 p.m.

Regulatory matter bearing enforcement implications.

The following additional item was considered at an open meeting held on Tuesday, June 18, 1985, at 10:00 a.m.

Consideration of proposals for a Report to Congress concerning oversight of the Government securities markets. For further information, please contact Andrew E. Feldman at (202) 272-2414.

The following items were not considered at the closed meeting held on Tuesday, June 18, 1985, at 2:30 p.m.

Subpoena enforcement action.
Opinion.

The following items were considered at a closed meeting held on Friday, June 21, 1985, at 10:00 a.m.

Settlement on an administrative proceeding.
Institution of an injunctive action.
Settlement of an injunctive action.
Formal order of investigation.

The following additional items will be considered at an open meeting to be held on Thursday, June 27, 1985, at 10:00 a.m.

1. Consideration of whether to propose for public comment an amendment to Rule 22 under the Public Utility Holding Company Act of 1935 which would require that all applications and declarations filed with the Commission under the Act include as an exhibit a proposed notice of the proceeding initiated by such filing; and an amendment to Form U–1 which would make the filing of proposed notices specifically applicable to persons using that form in submitting applications and declarations requesting orders under the Act. For further information, please contact Kathleen Brandon at (202) 272–2676.

2. Consideration of whether to publish a release and draft rule changing the categories of records available to the public in regional offices other than New York and Chicago as set out at 17 CFR 200.80(c)(1)(ii). For further information, please contact Jonathan G. Katz at (202) 272–7440, or John D. Heine at (202) 272–7422.

The following additional item will be considered at a closed meeting to be held on Thursday, June 27, 1985, following the open meeting.

Opinion.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

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 contract: Angela Hall at (202) 272–3085.

John Wheeler,
Secretary.
June 24, 1985.

[FR Doc. 85–15518 Filed 6–25–85; 11:34 am]
BILLING CODE 8010–01–M

federal register

Thursday
June 27, 1985

Part II

Department of Agriculture

Forest Service

36 CFR Part 223

Disposal of National Forest System Timber; Final Rule

Environmental Assessment; Federal Timber Contract Payment Modification Act; Contract Buy Out Provisions; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Disposal of National Forest System Timber

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: On October 16, 1984, the President signed into law the Federal Timber Contract Payment Modification Act. These rules implement those provisions of the act that allow the holders of certain Forest Service timber sale contracts to buy out of all or a portion of these contracts. These rules set forth procedures by which National Forest timber sale purchasers can receive entitlement to the benefits provided by the act and prescribe how the Forest Service will determine payments required of these purchasers.

EFFECTIVE DATE: June 27, 1985.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule may be addressed to: David M. Spores, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447–4051.

SUPPLEMENTARY INFORMATION:

Background

The Federal Timber Contract Payment Modification Act of October 16, 1984, (98 Stat. 2213; 16 U.S.C. 618) authorizes and directs the Secretaries of Agriculture and the Interior to permit a purchaser to be released from specified contractual obligations by returning to the Government a volume of certain timber sale contracts.

These rules apply only to Forest Service contracts. However, the act provides that similar rules be issued by the Secretary of the Interior for Bureau of Land Management timber sale contracts.

The Forest Service and Bureau of Land Management have engaged in extensive consultation and coordination during the development of their respective rules in order to achieve as much consistency as possible. Because of different statutory authorities and operating procedures, complete consistency is not possible. However, considerable uniformity has been achieved, and the rules are consistent in all substantive areas.

On December 7, 1983, at 48 FR 54812, the Forest Service, at the direction of the President, established a program to extend certain timber sale contracts in order to provide timber sale purchasers an opportunity to schedule harvest of high priced timber during better market conditions. The Federal Timber Contract Payment Modification Act ratifies that extension program, allows purchasers to but out contracts extended under the 1983 program, but prohibits the Forest Service from assessing additional default damages on any sales extended under that program.

In implementing the 1983 extension program, the Forest Service required purchasers to submit multi-sale extension plans. Purchasers who now wish to buy out timber sales included in those multi-sale extension plans shall revise their plans to reflect the bought out sales. The Forest Service published its proposed guidelines for revising multi-sale extension plans to accommodate the effects of the Federal Timber Contract Payment Modification Act in the **Federal Register** January 4, 1985, at 50 FR 458. Some procedures relating to contract buy out are included in this rule, and other guidelines will soon be announced in the **Federal Register** so that they may be available to purchasers while preparing their buy out applications.

Many purchasers have to plan their 1985 operations as soon as possible in order to schedule their personnel and equipment to meet the available markets. Therefore they need to start the buy out process as soon as possible so that they can know which contracts they will retain. In addition, section 2(a)(6)(B) of the Federal Timber Contract Payment Modification Act specifies that the final rule implementing the act shall require purchasers to submit buy out requests to the appropriate Secretary within 90 days after publication of such rules. For these reasons it is impracticable to delay implementation of these rules. They are effective upon publication in the **Federal Register.**

Introduction

On October 16, 1984, the President signed into law the Federal Timber Contract Payment Modification Act. This act has four major provisions:

1. It provides that holders of certain federal timber contracts may buy out of all or a portion of these contracts upon payment of a buy out charge;

2. It ratifies the Forest Service Multi-Sale Extension Program initiated in August 1983;

3. It requires the Forest Service to establish provisions for timber sale down payments and periodic payments while implementing procedures to monitor bidding, and to take steps to restrain speculative bidding; and,

4. It requires the Forest Service to make emergency rate redeterminations for certain sales in Alaska in order to establish contract rates for these sales which will permit the holders of these contracts to be competitive with other purchasers of national forest timber.

This final rule is limited to implementing the buy out provisions of the act. The proposed rule was published in the **Federal Register** on January 4, 1985, at 50 FR 488. Public comment was requested by February 4, 1985.

The Forest Service received comments on the proposed rule from 124 individuals and entities. Comments came from the general public, timber sale purchasers, timber trade associations, a conservation organization, accountants, bonding companies, and employees of the Department of Agriculture, Office of Inspector General, and Forest Service. About two-thirds of the respondents were from the Pacific Northwest.

The final rule has substantial support in the agency records, viewed as a whole, and full attention has been given to public comments and to the comments of persons directly affected by the rule in preparing the final regulations.

The following summarizes the major comments and suggestions received and the agency response to these in the final rule.

General Comments

Four respondents were against implementation of the act. This is not a viable option. The act is not discretionary; it mandates the Secretary to implement its provisions.

Several comments addressed overall topics, rather than specific sections of the proposed rule.

a. *Applicability.* Questions were raised as to whether the act only applied to net merchantable sawtimber. The wording in the final rule has been changed to clarify and emphasize that the volume entitlement, volume to be bought out, and the buy-out cost apply only to net merchantable sawtimber.

b. *Coordination.* Some respondents stressed the importance of coordination between the Department of Agriculture and Department of the Interior in implementing the buy out provisions of the act. There have been several meetings between personnel of the two Departments in the development of the proposed and final rules. Training of Agency personnel for administering the buy out will stress on-the-ground procedures for the inter-agency cooperation.

c. *Responsibilities.* Some respondents suggested that the proposed rule was not specific enough in defining the roles of the Regional Foresters and the

contracting officers. The final rule provides that the contracting officers will administer the timber sale contracts and furnish the Regional Foresters certain information that they need to make the determinations necessary to implement the act. Regional Foresters are responsible for administration of the act, such as action on the applications for contract buy out and accepting or rejecting the return of contracts.

A new section, § 223.172—Approval of application for contract buy out, describes a Regional Forester's responsibilities upon receipt of an application for contract buy out, and lists the standards that must be met before the application may be approved. Approval of the application is a necessary step toward return of a timber sale contract pursuant to § 223.178.

d. *Holder of a Contract.* It became apparent during the analysis of the comments received and preparation of the final rule that there was a need to be explicit as to the standards that had to be met for an entity to be considered the "holder of a contract to purchase timber from the Secretary of Agriculture." Therefore, the definition of "contract holder" has been added to § 223.170.

e. *Public Disclosure.* Several timber sale purchasers commented that the information submitted to establish the purchaser's net book worth should be kept confidential in order to minimize competitive harm. The Forest Service will provide confidentiality of material submitted, including a showing of net book worth, to the maximum extent allowed by law. All requests for information submitted pursuant to the Federal Timber Contract Payment Modification Act will be handled according to the Freedom of Information Act (5 U.S.C. 552), as amended, with full consideration of available exemptions from disclosure. The Freedom of Information Act is specific in describing the types of information exempt from public disclosure. Purchasers need to be aware that some of the financial information submitted by the purchasers may be available to the public upon request.

f. *Disputes.* Many respondents stated that the rule implementing the act should specify the methods to resolve disputes in administration of the buy out program. The final rule includes a new § 223.182, which provides that disputes that arise over the implementation of the buy out procedures, such as Regional Forester determinations on a contract buy out application, will be resolved under the Forest Service administrative review procedures (36 CFR 211.18). Disputes about the timber sale contracts and their provisions will be resolved pursuant to the Contract Disputes Act, or the contract disputes procedures that preceded that act.

Comments by Section of the Proposed Rules

Section 223.170 Definitions.

"(i) *Affiliate.* The proposed rule defined "Affiliate" as "Concerns affiliated at any time during the period of June 1, 1984, to the date of the purchaser's buy out application." Many respondents stated that the definition was too broad and would unnecessarily impede some restructuring of the forest products industry. The final rule sets the affiliation test period between June 1, 1984, and September 30, 1984. This includes the period immediately before Congress passed the act, so it protects the public against manipulation of affiliation to unduly affect the amount of timber a purchaser could return and/or the net book worth of the purchaser. September 30, 1984, was selected as the end of the affiliation test period because it was the end of a fiscal year, or fiscal year quarter, commonly used in the forest products industry. Therefore, it marks the end of an accepted record keeping period. In response to a suggestion from a respondent, the definition further provides that if a purchaser forms an affiliate after September 30, 1984, and before the time the purchaser determined its net book worth, the purchaser must include the affiliate in determining its net book worth. This should provide additional protection from possible manipulation of net book worth to affect buy-out costs.

(ii) *Contract Overbid.* Some respondents were unsure as to the timber volume that was to be used in calculating the contract overbid rate for determining the buy-out cost. The final definition specifies that the contract overbid is based on the remaining net merchantable sawtimber volume under contract.

(iii) *Net Book Worth.* Some respondents suggested that the definition of "Net Book Worth" be referenced to the Securities and Exchange Commission's (SEC) regulations. This would simplify the work that publicly held corporations would have to do to document their net book worth. However, compliance with the SEC's regulations could be complex to purchasers who are not publicly held corporations. Therefore, the final definition does not refer to the SEC regulations. The definition in the final rule is broad enough that a purchaser's documentation of net book worth in conformance with the SEC regulations meets many of the implementing requirements for the buy out.

(iv) *Net Merchantable Sawtimber.* Some western timber sale purchasers suggested that the definition of "Net Merchantable Sawtimber" be clarified by listing some timber sale products, including hardwood, that do not qualify as net merchantable sawtimber. However, hardwood sawtimber is a valuable product on many national forests. Therefore, although the definition of net merchantable sawtimber is clarified by listing some examples of non-sawtimber products, the definition does not automatically exclude hardwood.

(v) *Qualifying Contracts.* Some respondents objected to the proposed rule's requirement that a qualifying contract be in effect on the date of the purchaser's application for contract buy out. The definition of "Qualifying Contract" in the final rule does not include this requirement. The definition now conforms with the general language of the act.

The terms "qualifying contracts" and "qualifying timber sale contracts" are apparently used interchangeably in the act and appear as mandatory criteria in three sections of the act which have different purposes. First, "qualifying contracts" are the base from which a purchaser's volume entitlement is calculated by looking to the January 1, 1982, volume in those contracts the purchaser held as of June 1, 1984. Second, the purchaser's loss must be calculated by the Forest Service for "any qualifying timber sale contracts" by looking to the current delivered log value and log cost for that particular contract. In calculating a purchaser's aggregate loss, only contracts the purchaser held as of June 1, 1984, will be used. The June 1, 1984, holder of a contract does not have to hold the contract on September 30, 1984, in order for the contract to be used in calculating the purchaser's aggregate loss. Finally, when a purchaser elects to actually buy out a particular contract, it is clear that the contract must have been held by that purchaser on June 1, 1984. Because the buy-out cost is applied to the currently held volume bought out, a purchaser must hold a contract on both June 1, 1984, and the date of that purchaser's application for contract buy out in order for the purchaser to buy out the sale.

Section 223.171 Application for contract buy out.

(i) *Contents.* The act provides that affiliation will be considered in determining a purchaser's volume

entitlement and net book worth. Several respondents suggested that purchasers who elect to pay the highest buy out cost, and who would not provide information on net book worth, be required to list only their affiliates who purchase Federal timber. Many of these purchasers have several affiliates that are not related to the timber industry. Since including non-timber related affiliates in these applications would create added work for the purchaser when preparing the application, and for the Government in review of the application, and since the information would not help the administration of the act, this suggestion is included in the final rule.

A purchaser is entitled to buy out up to 55 percent of its qualifying Federal timber, up to a maximum of 200 million board feet. Several respondents proposed that instead of listing all Forest Service and Bureau of Land Management qualifying contracts and qualified defaulted contracts in the application, a purchaser who elects not to provide information on net book worth be only required to list up to 400 million board feet of such timber. This should be enough to establish the maximum volume entitlement. This suggestion will increase purchaser and Forest Service efficiency and it was adopted.

Questions arose as to how a purchaser and its affiliates should designate sales for buy out in order to get full volume entitlement without duplication or confusion. The final rule specifies that although an application will show the purchaser's and affiliate's sales, only the sales currently held by the purchaser can be designated for buy out on that application. It also provides that the volume a purchaser and its affiliates elect to buy out cannot exceed the affiliates' combined volume entitlement.

Some respondents objected to showing their preference for contract buy out as prescribed in the proposed rule. Purchasers who plan to buy out sales at rates established in section 2(a)(3)(A)(iii) of the act pointed out a need to show which sales they wanted included at each buy out rate. Application of specific buy out rates to volume is not precluded by selection of contracts to be bought out. The proposed rule has been clarified to reflect these comments.

(ii) *Election to Certify Net Book Worth.* Almost half the respondents commented that the documentation called for in the proposed rule to establish net book worth exceeded the standards required by the act. In addition, several respondents requested simpler net book worth requirements for companies in bankruptcy. The final rule responds to these concerns. It does not require an audit by a certified public accountant to establish net book worth. Purchasers in bankruptcy are provided an alternate method, if necessary, to establish net book worth. However, the final rule does contain a new requirement that purchasers must provide clarification of information provided in the application if the Forest Service so requests.

(iii) *Determination of Eligibility.* Several respondents objected to the part of the proposed rule that provided a purchaser 10 days to submit a revised list of sales if a Regional Forester determined that a contract elected for buy out was not eligible. They pointed out that market limitations and the availability of equipment and personnel complicated revision of a buy out application. Therefore, the final rule allows a purchaser to submit an amended application up to 30 days after receipt of a Regional Forester's rejection of a contract if the purchaser wants to request other sales for buy out.

The period provided by the act for purchasers to submit buy out applications will extend into the operating seasons of some timber sales. Some respondents were concerned about delays if a Regional Forester rejected a sale after the start of the operating season. However, purchasers can contact the contracting officers of their sales, find out which sales may be rejected for buy out, learn the likely conditions for return of partially operated sales, and plan their 1985 operations before they file their application for contract buy out. Therefore, there should be relatively few situations where this type of delay would occur.

A purchaser may submit only one amended application for Forest Service contract buy out unless the Regional Forester determines, upon a finding of good cause, the further amendment of an application may be made.

Purchasers can minimize the need for amended applications for contract buy out by discussing the possible eligibility and conditions for return of their contracts with the contracting officer before submitting their applications. This action by the purchasers can be very important in efficient implementation of the act. In the final rule this paragraph has been recaptioned as Approval of Application for Contract Buy Out and recoded as § 223.172.

Questions arose about the opportunity for a purchaser to correct errors in an application for contract buy out. Section 2(a)(6)(B) of the act provides that the implementing rule shall require purchasers to submit buy out requests within 90 days after publication of the rules. Section 223.171(a) implements this part of the act and outlines what constitutes an adequate request for buy out. Except for clerical errors, an application for contract buy out must be accurate, complete, and timely filed or the buy out request will not be considered.

A Regional Forester will notify the purchaser if an application is found to be inaccurate or incomplete. Unless the Regional Forester determines that the delay in submitting a corrected application is caused by factors beyond control of the purchaser, the purchaser shall correct and return the application to the Regional Forester during the period provided in § 223.171(a).

The final rule (§ 223.171(a)) provides that within 90 days of final publication of these rules any purchaser wishing to apply for contract buy out shall fully and accurately provide all of the required information on a form provided by the Forest Service. Section 223.181 specifies that a purchaser's obligations for timely buy-out cost payment is not affected by filing a corrected application.

Section 223.172 Volume entitlement.

(a) *Basis for Entitlement.* The proposed rule specified that volume entitlement is based on the net merchantable sawtimber volume held by the purchaser and its affiliates as of January 1, 1982. Many respondents suggested that the intent of the act was that purchasers who held qualifying contracts and/or qualified defaulted contracts on June 1, 1984, or those purchasers who currently hold such contracts would receive the volume entitlement based on the net merchantable sawtimber volume under such contracts as of January 1, 1982. The rule proposed by the Bureau of Land Management for implementing the act establishes volume entitlement with the current holder of a contract.

The final rule thus provides that the holders of qualifing contracts, qualified defaulted contracts, and Bureau of Land Management qualifying contracts as of June 1, 1984, may use the net merchantable sawtimber volume in those contracts as of January 1, 1982, in the calculation of their volume entitlement. The practical effect of the change in date is to grant volume entitlement to those parties who acquired eligible contracts between January 1, 1982, and June 1, 1984. The proposed rule limited volume

entitlement to those entities holding eligible contracts as of January 1, 1982.

(ii) *Volume Exceptions.* Several respondents said that it would be inequitable to require a purchaser to pay current contract rates for the volume necessary to reduce the volume elected for buy out to 200 million board feet. They said that the Government would receive current market value upon the resale of such timber. Therefore, if a purchaser paid the difference between the current market value rate and the current contract rate the Government would ultimately receive the current contract rate. However, a purchaser clearly has the option with respect to partially operated sales to harvest enough timber to reduce the remaining volume to a level within that purchaser's authorized buy out entitlement such that no inequity need occur.

The Forest Service does not have the authority to waive the contractual obligations of a purchaser, except under the specific authorizations of this act. Therefore this aspect of the proposed rule was not changed. This section is recoded as section 223.173 in the final rule.

Section 223.173 Buy-out cost.

(i) *Purchaser's Loss.* Many respondents wanted the formulas and procedures used to calculate purchaser's loss described in more detail than provided in the proposed rule. Therefore, a new § 223.174—Purchaser's Loss, is included in the final rule. The final rule specifies that the Forest Service will calculate the purchaser's loss by using a qualifying contract's or qualified defaulted contract's remaining net merchantable sawtimber volume as of September 30, 1984. September 30, 1984, was the most recent timber sale billing date prior to the signing of the act.

(ii) *Rates for Buy Out Costs.* Some respondents were uncertain as to whether the minimum buy-out cost of $10 per one thousand board feet applied to each species group within a contract to be bought out, to each contract to be bought out, or to a purchaser's total buy out volume. Respondents also wanted clarification that sales could be "split" across buy out charge percentages. Except where a purchaser's aggregate loss is in excess of 100 percent of that purchaser's net book worth, section 2(a)(3)(A) of the act establishes that the buy out charge is calculated as a percentage of the contract overbid with respect to specified volumes, so long as it is at least $10 per thousand board feet. The final rule specifies that the $10 per one thousand board feet minimum buy out cost applies to each individual contract to be bought out. Also, the language of the rule has been modified to make it more evident that the buy out charge percentages are to be applied to the volume being returned, not to the contracts involved.

Section 223.174 Conditions for return of timber sale contracts.

(i) *Intent.* Many respondents requested that the buy out rule contain a statement of the Forest Service intent in determining the conditions for return of timber sale contracts. There were several suggestions that the final rule contain a statement that a contract would be rejected for return only if it has been documented that unworkmanlike practices and procedures contrary to the approved plan of operation could not be remedied without serious disadvantage to the Government.

The Forest Service fully supports the objectives of the Act. These are; ". . . to retain jobs, to preserve free competition, to utilize the potential productive capacity of plants, to preserve small communities dependent on a single economic sector to assure an open and competitive market for future sales of Government timber, and to lessen the impact of unemployment, . . ."

Return of timber sale contracts is one of the primary mechanisms provided by the act to achieve these objectives. The discretion provided in the act will be exercised in light of this philosophy and the general guidance in the Forest Service Manual. Rejection of a timber sale contract elected for buy out shall only occur if the Regional Forester determines that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole and that accepting the return of the contract would seriously disadvantage the Government.

(ii) *Rejection of Contracts.* The final rule clarifies that the Regional Forester has the discretion to reject both qualifying contracts and qualified defaulted contracts.

(iii) *Logical Stopping Point.* Several respondents asked that more direction be provided for identification of logical stopping points, and gave several examples and suggestions. However, it appears that further identification of logical stopping points may unduly restrict reasonable return of some partially harvested contracts. Clarification of the Forest Service intent and addition of a dispute resolution provision meet much of the concern expressed about this topic.

The proposed rule provided for purchasers to pay current market rates for the volume of felled timber lost to deterioration. The Forest Service would establish the volume and value of deteriorated timber. Many respondents said that there should be an opportunity for a purchaser to provide an independent measurement of the deterioration loss in the felled logs. The final rule includes this provision. There were also requests that the rule contain a definition of current market rates. This term is now defined in section 223.170 of the final rule. Some timber sale contracts require removal of certain timber by specific priority removal dates. Failure to remove this timber by the specified date is a contract breach. Questions arose as to how a sale with deteriorating timber subject to a priority removal date could be returned. The final rule provides that a logical stopping point for a sale with such timber shall include removal of the felled timber or payment at current contract rates for any volume of felled timber lost by deterioration which was subject to a priority removal date.

Some respondents suggested that conditionally returned contracts could be closed irrespective of the unscaled volume in mill decks. They proposed that the Forest Service retain some of the purchaser's deposits on such sales and charge the purchaser at current market rates as the timber is scaled.

Neither the act nor existing timber sale contract provisions allow for release of the purchaser or contract closure before the purchaser pays for the timber removed from the sale area. The Forest Service does not have the authority to charge less than the current contract rates for timber removed from the sale area. The final rule clarifies this.

(iv) *Notification of Conditions.* Many commenters believe that a purchaser needs more than 10 days to submit a revised buy-out application after notification of the conditions which must be met for release of a conditionally returned contract. The final rule provides 30 days for the purchaser to submit a revised list of qualifying contracts and qualified defaulted contracts for which buy out is elected. As noted earlier, a purchaser may submit only one amended application for contract buy out unless the Regional Forester determines, upon a finding of good cause, that further modification of an application may be made.

(v) *Final Volume for Buy-Out Cost.* Some respondents recommended that when operations on units within a timber sale have been restricted or stopped by the Forest Service due to environmental, wildlife, or other

considerations, and it appears probable that these units will be permanently withdrawn, the volume contained therein should be deleted from the sale when application for buy out is received.

There are contractual limitations on the addition or deletion of timber in a timber sale contract. The timber sale contracts include provisions for modification of these contracts.

The Government would not be fulfilling its contractual responsibilities if it tried to enforce provisions not found in the contract. Therefore, the Forest Service will use the timber sale contract's designation of included timber, as modified prior to submission of the application for contract buy out, in the administration of the act.

Many respondents believe that there should be some provision for an independent cruise of the remaining timber in a contract. This is because the actual sawtimber volume on a sale may vary from the advertised estimated volume. A few respondents spoke against such a cruise. In response, a new section 223.175—Remaining Net Merchantable Sawtimber Volume, has been added to the final rule and provides for such a cruise for those contracts with half or more of the net merchantable sawtimber removed. Usually it is difficult to accurately estimate whether a sale includes more or less timber than originally advertised unless the estimate is based on at least the harvests of half of the sale volume.

(vi) Multi-Sale Extension Plans. Several respondents included comments about the interim policy for modification of the Forest Service timber sale extension program (50 FR 458). Many of these respondents stressed the importance of knowing the final extension policy as soon as possible so that they could make informed buy-out decisions. Respondents also mentioned the need to maintain a proportionate timber harvest under the extension program. In addition, some respondents expressed concern if they should have to modify their multi-sale extension plan before they had an opportunity to consider the Forest Service decisions about their application for contract buy out.

The final rule contains § 223.177(g) which specifies that if a purchaser requests to buy out of a contract included in the harvest schedule of an approved multi-sale extension plan, the purchaser has 45 days after receipt of the Forest Service approval of the buy out application in which to revise the harvest schedule. The purchaser shall delete the contracts approved for buy out and shall provide for proportionate harvest of the volume remaining in the harvest schedule. The revision of the harvest schedule shall be subject to Forest Service approval. The final rule § 223.171 also provides that if a purchaser requests to buy out a sale that is in a multi-sale extension plan harvest schedule, the purchaser's application for contract buy out shall include an agreement to make the needed harvest schedule revisions.

The Forest Service policy for other modifications of the timber sale extension program will soon be published in the **Federal Register.**

Section 223.175 Return of contracts.

(i) *Government Claims.* The proposed rule called for timely payment of any Government claim against the purchaser that arose under the contract prior to the buy out before a purchaser could be released from a contract. Some respondents wanted clarification of what constituted such a claim. The final rule clarifies the types of claims involved and specifies that a claim must have been asserted by the contracting officer before this paragraph is applicable.

(ii) *Interest Payments.* The proposed rule provided that contractual obligations on a contract under which harvest has not begun shall be held in abeyance as of the date the Regional Forester receives a completed buy out application. The abeyance period was not available for contracts with harvest. Some respondents felt that this penalized purchasers who had performed some contract obligations. They suggested that the abeyance period should also apply to contracts with harvest.

The abeyance provision has been extended to cover sales on which harvest has begun to include obligations to make payment for extension deposits, for removal schedule payments and for damages due to failure to cut, and interest on such amounts due.

Several respondents suggested that interest accruals under Forest Service contracts to be bought out should be held in abeyance as of January 15, 1985. This suggestion was based on section 2(a)(6)(A) of the act that provides for publication of final rules for buy out implementation within 90 days after enactment of the act (October 16, 1984).

This suggestion is not adopted. Neither the act nor the timber sale contract authorize such an action.

(iii) *Performance Bonds.* Some respondents proposed that the performance bond on a conditionally returned contract should be reduced to the amount of liability sufficient to complete the sale to a logical stopping point. This proposal was not adopted. A conditionally returned contract could be defaulted before it is completed to a logical stopping point, or the work required to reach a logical stopping point may not be completed in a satisfactory or timely manner such that the contract is not eligible for buy out. The present performance bond amount is needed to protect the Government in case of such default or in the event buy out of the contract does not occur.

Section 223.176 Alternate method of payment.

(i) *Reasonable Rates.* The act provides for an alternate method of paying buy-out costs where a purchaser is not able to obtain sufficient credit elsewhere at reasonable rates and terms. The proposed rule established reasonable rates as those within 4 percentage points above the current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. The Bureau of Land Management set the reasonable rate threshold at 3 percentage points above the Treasury rate.

Several respondents thought that a 4 percentage point threshold was unreasonable. Suggestions ranged from a 3 percentage point threshold to providing the alternate payment method to almost all the purchasers who request to use it. In consideration of these comments the final rule establishes a reasonable rate threshold at 3 percentage points above the Treasury rate.

A respondent expressed concern if the rate for Government financing under the alternate method of payment should be below the rate prudent companies are able to get financial banking during normal activities. The final rule provides that a purchaser requesting the alternate method of payment shall state whether or not it has recently had a loan approved within 3 percentage points above the Treasury rate.

(ii) *Payment Security.* Section 2(a)(3)(E) of the act requires that if a purchaser chooses to pay the buy-out cost in quarterly payments, "Payment must be secured by bond, deposited securities or other forms of security acceptable to the appropriate Secretary in an amount sufficient to cover the entire buy out payment."

Some of those who commented stated that the Forest Service should not limit the availability of the alternate payment method by requiring a payment bond. They pointed out that a purchaser who cannot get credit at reasonable rates elsewhere probably cannot get a bond to secure the buy out payment on sales

bought out. These comments were not accepted because to do so would be contrary to law, as the act specifically requires a bond or other acceptable security. In addition, once a contract with no outstanding claims is closed, the existing bonds on that contract will be released.

Some respondents believe that the Forest Service should accept other types of security besides the surety bond, irrevocable letter of credit or securities of the United States specified in the proposed rule. Many commented that the act provides more latitude than shown in the proposed rule.

There are stringent requirements upon payment guarantees for debts to the Government. Payment guarantees have been used in Forest Service timber sale contracts for several years. During this period the Secretary of Agriculture has established standards for acceptable payment guarantees. These standards were incorporated in the proposed rule and the final rule retains these standards without change.

Some respondents suggested that a purchaser should be able to reduce the amount of a surety bond used to secure the alternate payment method. In their view, the bond need not be larger than the outstanding balance of the buy-out cost. The declining balance of the buy out payment will legally limit the purchaser's and surety's liability. Therefore, the act's requirement that the bond, or other acceptable payment guarantee provided to secure the promissory note be ". . . in an amount sufficient to cover the entire buy out payment" is retained in the rule.

Section 223.177 Credits against buy out charges.

(i) *Purchaser Credit.* A large number of respondents stated that the buy out program is national in scope and, therefore, purchasers should be able to transfer purchaser credit earned on road construction to other national forests. They noted that the purchaser credit moved to other national forests to offset buy out costs would not be used for timber payments. In addition, some respondents observed that some effective purchaser credit could become ineffective if there were not enough but out costs and timber payments on the same national forest to use all such credit.

The National Forest Roads and Trails Act, as amended, (16 U.S.C. 532–538) restricts the transfer of effective purchaser credit to sales the purchaser holds on the same proclaimed national forest. The Federal Timber Contract Payment Modification Act does not provide increased authority for transfer of effective purchaser credit beyond that presently available in the National Forest Roads and Trails Act. Therefore, the final rule does not accommodate movement of purchaser credit between national forests.

(iii) *Other Credits.* Timber sale purchasers incur many expenses in conjunction with operations on the timber sale or in related contract activities on and adjacent to the national forests. These expenses include items such as unamortized balances in cooperative road-cost-share agreements and stockpiling of crushed rock for road maintenance. There were some comments that these expenses be available to offset buy-out costs. There is no authority to use these expenses as offset to the buy-out costs, so the final rule does not permit such use.

Section 223.178 Buy-out payments.

Several respondents indicated a desire to buy out their contracts as soon as possible. However, many of these respondents stressed the importance of cash flow and the advantages of delaying the payment of buy-out costs. Many of the timber sale purchasers said that they would rather delay buy out payments than rapidly return their contracts. They described the Government advantages associated with purchasers submitting buy out applications early in the application period, as compared to the problems that would result if all purchasers waited until the last day to submit their applications. They suggested that this would be enough consideration for the Forest Service to delay billing for buy-out costs until after the application period ended. They proposed that the first Forest Service buy-out cost billing be 30 days after the end of the period for submitting applications for contract buy out.

There are Government advantages if the applications for contract buy out are received throughout the application period instead of at the last minute. In addition, payment of buy-out costs can be more equitable if there is a single payment date for all purchasers who buy out timber sales. Therefore, the final rule prescribes that the Regional Forester shall bill purchasers for buy-out costs no sooner than 30 calendar days after the final date for submitting applications for contract buy out. The billing will include the estimated buy-out costs of the Forest Service contracts conditionally returned and those returned in full as estimated by the Regional Forester. The purchaser shall make buy out payments to the Regional Forester on or before the 60th calendar day after the final date for submitting applications for contract buy out. Late payment charges as prescribed in the Debt Collection Act of 1982 will accrue as of this date if the Regional Forester has not received the buy-out cost payment by then. Filing an amended or corrected application or a dispute will not affect the purchaser's obligation under this billing. The Regional Forester shall issue refunds or supplemental billings as necessary if the final buy out cost differs from the amount charged in the initial billing. Under the alternate method of payment (§ 223.179) the promissory note and security shall be modified to correspond to the final buy-out cost if this cost is different from the Regional Forester's initial billing. As specified in the act and in § 223.178(b), a purchaser cannot be released from its obligations under a contract to cut, remove, and pay for timber until the buy out costs have been paid or have been arranged to be paid in accordance with § 223.179.

Except for specific changes made in response to comments as noted in the preceding discussion, the final text of the rule is otherwise the same as that of the proposed rule.

Implementing Direction

The preamble of the proposed rule included a summary of proposed direction that would be issued in Chapter 2430 of the Forest Service Manual. This direction was intended to guide Forest Service personnel in implementing the buy out provisions of the proposed rule if adopted. Respondents did not separate their comments on the proposed rule from those on the proposed directive. Accordingly, all comments received, whether on the proposed rule or on the directive have been discussed in the preceding section.

The final directive will be modified to reflect changes in the final rule. To assist purchasers and other interested parties, a summary of the final directive is printed as Appendix A to this document.

Regulatory Impact

This action has been submitted to the Office of Management and Budget for review pursuant to Executive Order 12291. The Assistant Secretary for Natural Resources and Environment has determined that this regulation is not a major rule. It implements those portions of the Federal Timber Contract Payment Modification Act that allow purchasers of Forest Service timber sale contracts to return certain of these contracts to the Secretary of Agriculture upon satisfaction of specified conditions and

payments. The Federal Timber Contract Payment Modification Act is intended to prevent a large number of insolvencies among purchasers of federal timber, to preserve the employment generated by the forest products industry, and to avoid financial disruption to communities economically dependent upon the industry.

The only discretion available to the Secretary is in establishing administrative procedures to implement the buy out provisions of the act. The implementing procedures in this rule are designed to minimize further cost to both the Government and purchasers by:

1. Limiting procedures to those set forth in the act as much as possible;

2. Following standard Forest Service contracting practices and procedures wherever possible;

3. Providing cost effective methods for administering the buy out provisions; and,

4. Minimizing delay and disruption to the ongoing timber management program and to purchasers of timber sales.

Separate from the provisions of the act, the procedures implemented by this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local Government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary of Agriculture for Natural Resources and Environment has also determined that this rule, in and of itself, will not have significant economic impact on a substantial number of small entities. The act applies equally to small and large entities and establishes the qualifications and the calculation of the amount to be paid or arrangements to be made in order to buy out a Federal timber contract.

Based on environmental analysis, this rule will not significantly affect the environment. Therefore, an environmental impact statement has not been prepared. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this rule have been submitted to the Office of Management and Budget (OMB) pursuant to the procedures of 5 CFR 1320. The application for contract buy out is approved for use through February 29, 1988, and has been assigned OMB Control Number 0596-0092.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

PART 223—[AMENDED]

For the reasons set forth in the preamble, Part 223 of Chapter II, Title 36, Code of Federal Regulations is amended to add a new Subpart E to read as follows:

Subpart E—Federal Timber Contract Payment Modification Program

Sec.

Authority: 16 U.S.C. 472a, 16 U.S.C. 618.

Subpart E—Federal Timber Contract Payment Modification Program

§ 223.170 Definitions.

The terms used in this subpart have the following meaning:

"Act"—The Federal Timber Contract Payment Modification Act.

"Affiliate"—Concerns are affiliates if directly or indirectly, (a) either one controls or has the power to control the other, or (b) one or more third parties controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Concerns affiliated at any time during the period of June 1, 1984, through September 30, 1984, shall be considered affiliated for purposes of determining purchaser's net book worth and volume entitlement. Provided further, a purchaser forming an affiliate after September 30, 1984, and prior to the time when the purchaser determined its net book worth, shall treat such organization as an affiliate for purposes only of determining its net book worth. The Forest Service will determine the effect of joint venture agreements upon affiliation on a case-by-case basis based upon the nature of the relationship established by the joint venture.

"Bureau of Land Management Qualifying Contract"—Any Bureau of Land Management contract that qualifies for a buy out pursuant to the regulations of the Secretary of the Interior issued to implement the act.

"Buy-Out Cost", "Buy-Out Charge"—The payment prescribed by section 223.176 of this subpart for each one thousand board feet, or equivalent, of net merchantable sawtimber to be bought out. It does not include any payments, deposits, claims, or costs required by or under the timber sale contracts involved or payments for deterioration of felled timber on the ground.

"Concern"—Any business entity whether organized for profit or not. "Concern" includes but is not limited to an individual, joint venture, partnership, corporation, association, or cooperatives.

"Conditionally Returned Contract"—An otherwise qualified timber sale contract under which harvest or road construction required by the contract has begun, but on which either harvest operations or road construction has not yet been completed to a logical stopping point and on which the purchaser must complete specified requirements before the contract can be bought out.

"Contract Closure"—

(a) Where the contracting officer has asserted no contract claim prior to Forest Service release of the contract from further obligations (§ 223.178(b)), or where the claim is for damages for failure to cut: Execution of an agreement by both the contracting officer and the holder of a contract approved for closure by the Regional Forester releasing both parties from further rights and obligations under that contract.

(b) Where claim(s) by the Government remain unresolved: Execution of an agreement by both the contracting officer and the holder of the contract releasing the holder only from the obligation to cut, remove, and pay for timber and retaining all other rights and obligations of the contract until the specified claim(s) are finally resolved.

"Contract Holder"—As of a given date, the concern having the right to harvest timber included in a Forest Service timber sale contract resulting from either contract award or transfer of the contract by execution of an approved third party agreement. The contract holder as of the date of default is the contract holder of a qualified defaulted contract.

"Contracts On Which Harvesting Has Begun"—Any qualifying contract or qualified defaulted contract on which the purchaser has initiated any

contractually controlled items requiring felling trees, road construction or other ground disturbing activities.

"Contract Overbid"—The difference between the weighted average advertised contract rate for the remaining net merchantable sawtimber volume under contract to be bought out and the weighted average rate the purchaser bid for such remaining net merchantable sawtimber volume.

"Contracting Officer"—The designated Forest Service officer with authority to administer and make determinations with respect to a particular timber sale contract.

"Current Contract Return"—The current contract rates as defined and specified in a Forest Service timber sale contract.

"Current Delivered Log Cost"—The Forest Service of Bureau of Land Management estimate (developed to determine the purchaser's loss on a timber sale) of the cost, including payment at current contact rates, to a purchaser of average efficiency to produce and deliver net merchantable sawtimber logs from that sale.

"Current Delivered Log Value"—The Forest Service or Bureau of Land Management estimate (developed in order to determine a purchaser's loss on a timber sale) of the value of delivered net merchantable sawtimber logs from that sale.

"Current Market Rate"—The average rate bid by species for National Forest timber in the applicable appraisal zone during the period October 1, 1984, through March 31, 1985.

"Defaulted Contract"—An uncompleted Forest Service timber sale contract that has expired, or has been abandoned or repudiated by the purchaser, or has been cancelled by the Forest Service pursuant to a breach of the contract by the purchaser. The date of default in such circumstances is the date of expiration, abandonment, repudiation or cancellation, as applicable.

"Effective Purchaser Credit"—Unused, earned purchaser credit that does not exceed "Current Contract Value" minus "Base Rate Value" as defined in Forest Service timber sale contracts.

"Independent Certified Public Accountant"—An individual, professional corporation, or partnership of individuals, licensed under State law to render an opinion as to whether financial statements have been presented fairly in conformity with generally accepted accounting principles, and not an employee of the applicant or of an affiliate of the applicant.

"Logical Stopping Point"—The point of accomplishment, as determined by the Regional Forester after contracting officer's consultation with the purchaser, to which a purchaser must timely complete contractually required work. Such point shall, as determined by the Forest Service, include removal of felled timber at current contract rates or payment for deterioration of felled timber at current market rates if the felled timber is not subject to a priority removal date, or payment for the felled timber lost to deterioration at current contract rates if the timber is subject to a priority removal date.

"Net Book Worth"—The excess of assets (using historical cost-basis accounting principles) over liabilities, as determined using generally accepted accounting principles consistently applied. For a corporation, net book worth represent the shareholders' equity. For a partnership, net book worth represents the sum of the partners' capital accounts. For a proprietorship, net book worth represents the owner's proprietorship account for that business concern. The worth so determined shall be adjusted if necessary so as to eliminate any anticipated losses or gains on any outstanding, uncut Federal timber sale contract. For a purchaser with affiliates, net book worth shall be aggregated for that purchaser and its affiliates.

"Net Merchantable Sawtimber"—That volume of timber included in Forest Service timber sales generally characterized as "logs" or "sawlogs" or following normal Regional practices and meeting the utilization standards stated in provisions A-2, AT-2, or 2 of Forest Service timber sale contracts. Cull logs, pulpwood, and the other materials listed in provisions A-2, AT-2, or 2, or otherwise designated for removal, that are not characterized as "logs" or "sawlogs" are not net merchantable sawtimber.

"Purchaser"—A contract holder of either (a) a qualifying contract; (b) a qualified defaulted contract; or (c) a Bureau of Land Management qualifying contract.

"Purchaser Credit"—The credit earned pursuant to a Forest Service timber sale contract for construction of specified roads or as otherwise provided in such contracts.

"Purchaser's Aggregate Loss"—The result of aggregating the purchaser's loss, whether negative or positive, on all the qualifying contracts, qualified defaulted contracts and Bureau of Land Management qualifying contracts held by the purchaser and affiliates on June 1, 1984.

"Purchaser's Loss"—The result of subtracting the current delivered log value from the current delivered log cost on the volume of net merchantable sawtimber, as of September 30, 1984, on a qualifying contract, qualified defaulted contract, or Bureau of Land Management qualifying contract held by the purchaser on June 1, 1984.

"Qualified Defaulted Contract"—An otherwise qualifying contract which was defaulted after January 1, 1981, and which, regardless of whether timber in the contract has been resold, meets the following conditions:

(a) Settlement for damages has not been reached between the purchaser and the United States.

(b) The purchaser's aggregate loss as determined under these rules exceeds 50 percent of the purchaser's net book worth.

"Qualifying Contract"—A Forest Service timber sale contract, containing net merchantable sawtimber volume, bid prior to January 1, 1982, for an original contract period of 10 years or less, and which was held by the requesting purchaser on June 1, 1984. Only for purposes of buying out a contract, the contract must also be currently held by the requesting purchaser.

"Remaining Net Merchantable Sawtimber Volume"—The volume of net merchantable sawtimber which has not been removed from the sale area under a timber sale contract as of a given date.

"Residual Value Appraisal"—A procedure used to determine fair market value of national forest system timber by subtracting the anticipated production costs of an operator of average efficiency from the selling values of products normally manufactured from the timber to be sold.

"Special Report"—A report prepared by an independent certified public accountant in a format prescribed by the Forest Service.

"Transaction Evidence Appraisal"—A procedure used to determine fair market value of national forest system timber by comparing a prospective timber sale with previously sold sales of similar timber and the values bid for these sales.

"Volume Entitlement"—The aggregate volume of Bureau of Land Management and Forest Service net merchantable sawtimber that may be bought out under the act.

§ 223.171 Application for contract buy out.

(a) *Application.* Within 90 days of final publication of these rules any purchaser wishing to apply for contract

buy out shall fully and accurately provide all of the following information on a form provided by the Forest Service to the Regional Forester of the Region in which the purchaser elects to buy out the greatest volume of national forest timber:

(1) Names and addresses of all affiliates, except that a purchaser electing not to provide net book worth does not need to list affiliates who do not purchase Federal timber.

(2) A list of all qualifying contracts, qualified defaulted contracts and Bureau of Land Management qualifying contracts held by the purchaser and its affiliates on June 1, 1984, except that the list of such contracts provided by a purchaser electing not to provide net book worth does not need to include more than 400 million board feet of net merchantable sawtimber. This list shall include the timber sale name, contract number, bid date, and the purchaser's estimate of remaining net merchantable sawtimber volume on January 1, 1982, September 30, 1984, and on the date of application for contract buy out. The purchaser shall designate those sales that the purchaser held on June 1, 1984, and on the date of application for contract buy out that are requested to be bought out. The sum of the net merchantable sawtimber volume requested to be bought out by the purchaser and the net merchantable sawtimber volume requested to be bought out by affiliates of the purchaser shall be within the affiliates' combined volume entitlement. Purchasers whose buy-out cost is believed to be at the rates specified in § 223.176(a)(3) shall indicate the buy-out cost rate or rates believed applicable to each contract or volume under the contract to be bought out, whichever is applicable.

(3) If purchaser is in bankruptcy, evidence of approval by the bankruptcy court presiding over purchaser's bankruptcy of the application, or any revisions to that application, and of the method of payment of the buy-out cost.

(4) If the purchaser requests buy out of a timber sale which is subject to an assignment in trust, evidence of the assignee's approval of the application, and/or any revision thereof.

(5) If the purchaser requests to reduce the total volume in contracts requested to be bought out to 200 million board feet pursuant to § 223.173(d)(2), information on the timber to be purchased under a specified contract.

(6) If a purchaser requests to buy out of a sale that is included in the harvest schedule of an approved multi-sale extension plan, an agreement that the purchaser will revise that harvest schedule to delete the contracts approved for return, and to provide for proportionate harvest of the volume remaining in the harvest schedule; and that the purchaser shall make this revision within 45 days of receipt of the Forest Service approval of its application for contract buy out. The revision shall be subject to Forest Service approval.

(b) *Election to provide net book worth.* A purchaser electing to qualify for a buy-out cost other than the amounts specified in § 223.176(a)(3), or to include a defaulted contract for calculation of volume entitlement, or to return a defaulted contract shall establish the combined net book worth of it and its affiliates. Net book worth for purchasers or their affiliates which are publicly held corporations shall be as of the date of their most recent annual report filed prior to publication of this rule on Form 10–K with the Securities and Exchange Commission. Net book worth for purchasers or their affiliates which are not publicly held corporations shall be as of the purchaser's or affiliate's most recent fiscal year end for which a financial statement has been prepared prior to publication of this rule and be of a date of no more than 15 months prior to the date of purchaser's application for contract buy out. A purchaser shall submit the following net book worth supporting data as part of its application for contract buy out:

(1) A statement of net book worth in a format prescribed by the Forest Service.

(2) A special report covering the determination of net book worth for the purchaser and its affiliates made by an independent certified public accountant reported in a format acceptable to the Forest Service.

(3) (i) For purchasers or their affiliates that are publicly held corporations, a copy of the most recent annual reports, prior to the publication of this rule, filed on Form 10–K with the Securities and Exchange Commission.

(ii) For purchasers or their affiliates which are not publicly held corporations, a copy of the most recent fiscal year end for which a financial statement has been prepared prior to the publication of this rule, balance sheets along with any accompanying footnotes, reviewed or audited by the independent certified public accountant referred to in preceding paragraph (b)(2) of this section. All balance sheets submitted under this paragraph shall have been prepared and dated no more than 15 months prior to the date of purchaser's application for contract buy out.

(4) The name, address, and telephone number of the independent certified public accountant(s) that determined the net book worth(s).

(5) An agreement that the purchaser (i) will retain for 3 years from the date of purchaser's application for contract buy out the accounting records used to develop its financial statements for the determination of net book worth, including the independent certified public accountant's audit or review reports that are associated with the balance sheets used in determining net book worth, and (ii) will make such information available, upon request, for verification by authorized respresentatives of the U.S. Government.

(6) A statement signed by the purchaser or, in the case of a corporate purchaser, by its chief executive officer, certifying under penalty of 18 U.S.C. 1001 that the information provided in support of the determination of net book worth is complete and accurate.

(7) Where a purchaser has filed for bankruptcy and can demonstrate to the satisfaction of the Regional Forester that it cannot provide financial statements as set forth above, the purchaser may submit a notarized copy of the documentation or financial statements required by and used in the bankruptcy proceedings to establsih the purchaser's net book worth.

(c) *Additional information.* At Forest Service request, the purchaser must provide clarification of information submitted in the application for contract buy out.

(Information collection requirements have been by the Office of Management and Budget under control number 0596–0092)

§ 223.172 Approval of application for contract buy out.

(a) *Regional Forester review.* The Regional Forester to whom the application for contract buy out is submitted shall determine (1) the qualifications of contracts listed, (2) volume entitlement, (3) purchaser's loss on each qualifying contract and on each qualified defaulted contract, (4) purchaser's aggregate loss, (5) remaining net merchantable sawtimber volume applicable to the buy-out program, (6) total buy-out cost, and (7) the conditions and limitations on the return of qualifying contracts and qualified defaulted contracts. The Regional Forester shall notify the purchaser of these determinations.

(b) *Amended application for contract buy out.* (1) A purchaser may submit an amended application for contract buy out within 30 days after receipt of notification of:

(i) The Regional Forester's determination that a contract elected for buy out is not a qualified contract, is not a qualified defaulted contract, or, except for rejection of a conditionally returned contract for failure to timely complete contract obligations to a logical stopping point, is ineligible to be a conditionally returned contract;

(ii) The Bureau of land Management's determination of the conditions, if any, that must be met for a conditionally returned contract to be accepted for buy out.

(iii) The Regional Forester's determination of the conditions, if any, that must be met for a conditionally returned contract to be accepted for buy out.

(2) Rejection of a conditionally returned contract for failure to timely complete contract obligations to a logical stopping point is not a basis for an amended application for contract buy out. If a purchaser wishes to amend its Forest Service application for contract buy out in response to Bureau of Land Management notification, the purchaser must submit a copy of the Bureau of Land Management's notification with its amended application.

(3) A purchaser may submit only one amended application for contract buy out unless the Regional Forester determines that good cause exists and the reason(s) for further modification of the application was not reasonably foreseeable.

(c) *Application approval.* The Regional Forester will approve an application for contract buy out upon the determination that:

(1) The contracts used for calculation of volume entitlement, purchaser's loss and the request for buy out are qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts, that meet the applicable requirements established by these regulations;

(2) The volume of net merchantable sawtimber requested for buy out does not exceed the purchaser's and affiliates' volume entitlement; and,

(3) The information contained in the application for contract buy out appears accurate and complete.

§ 223.173 Volume entitlement.

(a) *Basis for entitlement.* The Regional Forester shall calculate volume entitlement based on the remaining net merchantable sawtimber volume, as of January 1, 1982, in otherwise qualifying contracts, qualified defaulted contracts, and Bureau of Land Management qualifying contracts held by the purchaser and its affiliates on June 1, 1984. For purposes of determining volume entitlement, the concern holding the contract as of June 1, 1984, need not be the same party holding the contract as of January 1, 1982.

(b) *Holders of more than 27.3 million board feet.* A purchaser and its affiliate(s) holding qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts on June 1, 1984, with a total volume, as of January 1, 1982, of more than 27.3 million board feet of net merchantable sawtimber are entitled to buy out up to 55 percent of the net merchantable sawtimber volume up to a maximum of 200 million board feet.

(c) *Holders of 27.3 million board feet or less.* A purchaser and its affiliate(s) holding qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts on June 1, 1984, with a total volume, as of January 1, 1982, of 27.3 million board feet or less of net merchantable sawtimber are entitled to buy out up to 15 million board feet of the net merchantable sawtimber volume or one contract which includes such net merchantable sawtimber, whichever is greater in volume.

(d) *Volume exceptions.* (1) Provided the maximum volume of 200 million board feet is not exceeded, the percentage limitation of paragraph (b) of this section or the volume limitation of paragraph (c) of this section may be exceeded by a volume amount no greater than the volume of the smallest volume contract requested for buy out by the purchaser and its affiliates only where a purchaser and its affiliate(s) could not otherwise attain the percentage or volume entitlement.

(2) If a purchaser and its affiliate(s) cannot otherwise attain the full volume eligible for buy out, a purchaser may reduce the volume of a qualifying contract under which harvest has begun by removing and paying for at current contract rates, or by paying current contract rates under the contract, for so much of the volume in the contract as would cause the total volume being bought out by the purchaser and its affiliates to exceed 200 million board feet of net merchantable sawtimber. The purchaser must indicate on its application the sale on which this option will be exercised and whether the conditional return of this sale will be based on removal and payment, or just payment for the excess volume. If purchaser removes timber to reduce volume below 200 million board feet, such operations must be brought to a logical stopping point.

§ 223.174 Purchaser's loss.

(a) *Data to be used.* To calculate a purchaser's loss per unit of volume on a contract, the Regional Forester will use information from the most recent Forest Service appraisal of that qualifying contract or qualified defaulted contract, updated to the Forest Service appraisal data effective on October 16, 1984.

(b) *Calculation with residual value appraisals.* The Forest Service will calculate the current delivered log cost of the net merchantable sawtimber in a qualifying contract or qualified defaulted contract by adding the updated appraised logging costs to the current contract rates for such timber and then multiplying that sum by the remaining net merchantable sawtimber volume on that contract as of September 30, 1984. The current delivered log value of such a contract will be calculated by subtracting the updated appraised manufacturing costs, and their associated profit and risk allowances, from the updated appraised selling values and then multiplying that result by the remaining net merchantable sawtimber volume on that contract as of September 30, 1984.

(c) *Calculation with transaction evidence appraisals.* The current delivered log cost is the product of the current contract rates and the remaining net merchantable sawtimber volume on that contract as of September 30, 1984. The current delivered log value is the product of the updated appraised value and the remaining net merchantable sawtimber volume on that contract as of September 30, 1984.

(d) *Bureau of Land Management qualifying contracts.* The Regional Forester to whom the application for contract buy out is submitted will obtain the Bureau of Land Management authorized officer's determination of the purchaser's loss or gain on any Bureau of Land Management qualifying contracts included in the application for contract buy out. This loss or gain shall be added to the purchaser's total loss or gain on Forest Service sales to determine purchaser's aggregate loss.

§ 223.175 Remaining net merchantable sawtimber volume.

(a) *Responsibility.* The contracting officer will estimate the remaining net merchantable sawtimber volume on a qualifying contract or qualified defaulted contract on each applicable date specified in this subpart and provide this information to the Regional Forester to whom an application for buy out has been submitted. The Regional Forester will confirm these volume estimates for use in calculations

associated with determining volume entitlement, volume to be bought out, and purchaser's buy-out cost.

(b) *Contracts with less than one-half the net merchantable sawtimber volume removed.* If less than one-half of the advertised net merchantable sawtimber volume, as adjusted by any contract modification, on a qualifying contract or qualified defaulted contract has been removed, the remaining net merchantable sawtimber volume will be calculated by subtracting the net merchantable sawtimber volume removed as of the specified date from the advertised volume, as adjusted by any subsequent contract modification, of such timber.

(c) *Contracts with one-half or more of the net merchantable sawtimber removed.* If one-half or more of the advertised net merchantable sawtimber volume, as adjusted by any contract modification, on a qualifying contract or qualified defaulted contract has been removed as of the specified date, the contracting officer will estimate the remaining net merchantable sawtimber volume. The contracting officer will fully document the basis for any volume estimate different from that derived by the procedure described in paragraph (b) of this section. If the purchaser disagrees with the contracting officer's estimate of remaining net merchantable sawtimber volume, the purchaser, at its expense, may have the remaining volume estimated by an independent qualified party acceptable to the contracting officer, using methods acceptable to the contracting officer. Upon verification and agreement by the contracting officer, the independent party's estimate of remaining net merchantable sawtimber volume will then be submitted to the Regional Forester for use associated with determining volume entitlement and purchaser's buy-out cost. If the contracting officer does not agree with the independent party's estimate of remaning net merchantable sawtimber volume, the contracting officer will document the reasons. The contracting officer will send the independent part's estimate, the contracting officer's estimate of the remaining volume, and the reasons for not agreeing to the independent estimate to the Regional Forester for use in determining the remaining volume.

§ 223.176 Buy-out cost.

(a) *Calculation with net book worth.* The buy-out cost shall be calculated as follows:

(1) If a purchaser's aggregate loss exceeds 100 percent of its net book worth, the buy-out cost shall be $10 for each thousand board feet of currently held volume to be bought out;

(2) If a purchaser's aggregate loss is in excess of 50 percent up to 100 percent of net book worth, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 10 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(3) If a purchaser's aggregate loss is 50 percent or less of net book worth, the buy-out cost shall be determined on the basis of percentages in 25 million board feet increments according to the following scale:

(i) For the first 125 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 15 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(ii) For any amount above 125 million board feet, up to 150 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 20 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(iii) For any amount above 150 million board feet, up to 175 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 25 percent of the contract overbid for each contract bought out, or $10, whichever is more; and,

(iv) For any amount above 175 million board feet, up to 200 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 30 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(4) A Regional Forester may divide a contract into parts and apply a different buy-out cost to each part if this is necessary to comply with the 25 million board feet increments in paragraph (a)(3) of this section.

(b) *Calculation without net book worth.* If a purchaser and its affiliates elect not to supply the net book worth information required in section 223.171(b), the applicable buy out cost shall be calculated in the same increments and percentages as prescribed in paragraphs (a)(3)(i)-(iv) of this section.

§ 223.177 Conditions and limitations on return of timber sale contracts.

(a) *Contracts on which no harvesting has begun.* A contract on which no harvesting has begun and which is to be bought out pursuant to this subpart shall be returned in full.

(b) *Contracts on which harvesting has begun.* For contracts on which harvesting has begun and which are requested to be bought out pursuant to this subpart, the Regional Forester has the discretion (1) to conditionally accept return of the contract contingent upon the purchaser completing specified contractual operations, including work on roads, to logical stopping points prior to the contract being eligible for buy out, (2) to accept the contract for return after determining no additional work is necessary to complete specified contractual obligations, including work on roads, to logical stopping points, or (3) to reject return of the contract because the remaining unharvested volume is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria and accepting the return of such a contract would seriously disadvantage the Government. The Regional Forester shall document the determination as to whether or not the unharvested volume is substantially representative or unrepresentative of the original sale as a whole, and whether or not, if unrepresentative, return of the contract would seriously disadvantage the Government.

(c) *Logical stopping point.* The Forest Service will accept a conditionally returned contract for buy out only after the purchaser has completed contractual obligations for the units on which harvest has begun, including road construction, to logical stopping points. The purchase shall return in full cutting units on which harvest has not begun. A logical stopping point shall include payment at current contract rates and applicable charges, including interest due on charges and deferred payments, for all material included in the timber sale contract that is removed from the sale area by the purchaser. A logical stopping point shall also include removal of any felled timber on the ground or payment at current contract rates for the volume of any such timber lost by deterioration which was subject to a priority removal requirement. Payment for the volume of other felled timber lost by deterioration shall be at current market rates and payment shall be in addition to payment of the normal buy-out cost which includes payment for the entire volume to be bought out, including the volume lost by deterioration. The Forest Service will establish the volume of felled timber on the ground and the volume of the deteriorated timber. If the purchaser disagrees with the Forest Service's

determination of the volume of felled timber or the volume lost to deterioration, the purchaser, at its expense, may have the volumes estimated by a qualified independent party acceptable the contracting officer, using methods acceptable to the contracting officer. Upon verification and agreement by the contracting officer, the independent party's estimate of the volume of the felled timber and/or the deterioration volume loss shall be submitted to the Regional Forester for determination of the deterioration payment. If the contracting officer does not agree with the independent party's estimate of the volume of felled timber and/or the deterioration loss, the contracting officer will document the reasons for not agreeing with the independent estimate. The contracting officer will send the independent party's estimate and the contracting officer's estimate of the volume of felled timber and the deterioration loss, and the reasons for lack of agreement to the Regional Forester for the Regional Forester's use in determining the deterioration payment.

(d) *Remedy for breach.* Before the Forest Service will accept a conditionally returned contract for buy out, the purchaser shall remedy any contract breach or other aspect in which work performed to date is not in full compliance with the terms of the contract, except that a contract not in default but in breach only because of failure to pay extension deposits, and/or removal schedule payments, shall become eligible for buy out when payment of the full amount of interest due up to the date the purchaser's buy out application is received by the Regional Forester.

(e) *Time limits.* After consultation with the purchaser with respect to each conditionally returned contract, the contracting officer will recommend, and the Regional Forester will establish reasonable dates for the purchaser to complete such contracts to a logical stopping point. Such dates will be specified as part of the approval of the conditional return. Failure to complete requirements by the established dates shall result in rejection of a conditionally returned contract unless the Regional Forester determines the delay is caused by factors beyond control of the purchaser. A purchaser may, upon notification from the Regional Forester of the conditions, if any, that must be met in order for a conditionally returned contract to be accepted for buy out, submit an amended application for contract buy out in accordance with § 223.172(b).

(f) *Final volume for buy-out cost.* The remaining net merchantable sawtimber volume as of the date of purchaser's application for contract buy out shall be used to calculate the buy-out cost except that the remaining net merchantable sawtimber volume used to determine the buy-out cost for a conditionally returned contract shall not include volume removed and paid for as a condition for buy out of the contract.

(g) *Multi-sale extension plans.* A purchaser who requests buy out of a contract that is included in the harvest schedule of an approved multi-sale extension plan shall revise that harvest schedule within 45 days after receipt of the Forest Service approval of its application for contract buy out. The purchaser shall delete the contracts that are approved for return from the harvest schedule, and provide for proportionate harvest of the volume remaining in the harvest schedule. The revision shall be subject to Forest Service approval. Failure to request and agree to a multi-sale extension plan revision in accordance with this paragraph, and to agree to the timber sale contract modifications that implement the plan revision, shall make a purchaser ineligible for any further contract extensions under the multi-sale extension program of December 7, 1983.

§ 223.178 Return of contracts.

(a) *Contractual obligations.* (1) Contractual obligations on a contract under which harvest has not begun and which the purchaser requests to buy out shall be held in abeyance as of the date the Regional Forester receives a purchaser's completed application for contract buy out prepared pursuant to § 223.171. The period of abeyance shall continue until the contract is released pursuant to paragraph (b) of this section or until the contract is determined to be unqualified for buy out. If a contract is determined to be unqualified for buy out, the purchaser shall be responsible for payment obligations and interest accruals otherwise arising during the period of abeyance.

(2) Contractual obligations on conditionally returned contracts will remain in full force and effect until released pursuant to paragraph (b) of this section, except that obligations to make payment for extension deposits, and removal schedule payments and payments for damages for failure to cut, and interest thereon, will be held in abeyance as of the date the Regional Forester receives a purchaser's completed application for contract buy out. The period of abeyance shall continue until the contract is released pursuant to paragraph (b) of this section or until the purchaser fails to meet the established conditions for return of the contract within the prescribed dates, or until the contract is determined to be unqualified for buy out. If purchaser fails to meet the conditions established by the Regional Forester for return of a conditionally return contract or it is determined that the contract is unqualified for buy out, the purchaser shall be responsible for all payment obligations and interest accruals otherwise arising during the period of abeyance.

(b) *Release from further obligations.* The Forest Service shall, by contract closure, release a purchaser from further obligations to cut, remove, and pay for timber under a returned contract upon:

(1) Timely payment or arrangement for payment (§ 223.181) of the applicable buy-out cost; and,

(2)(i) Timely fulfillment of any Government claim that arose under the contract (other than damages due to a purchaser's failure to cut under contract provisions B9.4, BT9.4, or 16) which has been asserted by the contracting officer prior to the Forest Service release from further obligations; or

(ii) Agreement to retain payment and performance guarantees under the contract pending resolution of the Government's claim.

(3) Timely completion of the conditions prescribed by the Regional Forester if the contract is a conditionally returned contract (§ 223.177); and

(4) Release of the Government from all claims arising from the returned contract.

§ 223.179 Alternate method of payment.

(a) *Quarterly buy-out payments.* If a purchaser is unable to obtain sufficient credit at reasonable rates and terms to finance the buy-out cost, the purchaser, on or before the 60th calendar day after the final date for submitting application for contract buy out and upon establishing inability to obtain sufficient credit elsewhere, and upon payment of 5 percent of the estimated buy-out cost, may execute a promissory note on a form provided by the Forest Service, to pay the remainder of the estimated buy-out cost in equal quarterly payments over a period not to exceed 5 years with interest calculated on the outstanding remainder of the buy-out cost at an interest rate adjusted at each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. Nothing shall prohibit purchaser's pre-payment at the date for any quarterly payment of all or a portion of the outstanding remainder of the buy-out

cost. To guarantee payment, purchaser must provide an acceptable surety bond on a form provided by the Forest Service, or provide an irrevocable letter of credit, or securities of the United States, in an amount sufficient to cover the entire buy-out payment. A purchaser may amend the promissory note and payment guarantee furnished pursuant to this section if the final buy-out cost (§ 223.176) is different from the estimated buy-out cost calculated by the Regional Forester pursuant to § 223.181.

(b) *Alternate payment eligibility establishment.* To establish inability to obtain sufficient credit elsewhere, a purchaser must provide a written statement, on a from provided by the Forest Service, from at least two Federal or state chartered financial institutions engaged in providing financing to the timber industry, and one from the lending institution with which the purchaser usually transacts business. The statement from the lending institution shall state with such institution is the one with which the purchaser usually transacts business. Each statement must show that the purchaser has, upon application in form and detail acceptable to the lending institution, been denied a loan from the lending institution for all or part of the amount equal to the total buy-out cost at an interest rate within 3 percentage points above the then current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. The statement must be signed by an authorized officer of the institution. The purchaser must state whether or not it has received a loan during the period beginning six months prior to the publication of this rule and ending on the date of the purchaser's application for contract buy out at an interest rate within 3 percentage points above the current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. If the purchaser has received such a loan, the purchaser shall make details of the loan available upon Forest Service request.

§ 223.180 Credits against buy-out charges.

Upon purchaser's request, a contracting officer will credit against the buy out charge certain unobligated credits, as determined by the contracting officer, in the timber sale account of Forest Service contracts the Regional Forester has approved for buy out. Examples of such credits include earned, unused effective purchaser credit, where appropriate, and unencumbered cash deposits.

§ 223.181 Buy-out payments.

The Regional Forester shall bill a purchaser for the total estimate buy-out cost for Forest Service contracts requested for buy out. The Regional Forester shall calculate the billings on the estimated final volume for buy-out cost (§ 223.177(f)). The Regional Forester shall make such billing no sooner than 30 calendar days after the final date for submitting applications for contract buy out. The purchaser shall make buy-out cost payment, including any initial payment as provided for in § 223.179(a), to the Regional Forester on or before the 60th calendar day after the final date for submitting applications for contract buy out. Purchaser shall make any subsequent payments under § 223.179(a) within 30 calendar days of receipt of the billing. A purchaser's obligation under this section for timely payment of buy-out costs is not affected by the filling of an amended application for contract buy out pursuant to § 223.172(b), or by the filing of a corrected application for contract buy out, or by a request for administrative review pursuant to section 223.182, or by other dispute relating to either the contract or administration of the buy out program. If the Regional Forester has not received the buy-out cost payment, including the initial payment as provided for in § 223.179(a) by the 60th calendar day after the final date for submitting applications for contract buy out, the purchaser shall pay late payment charges on the outstanding billed amount as prescribed in the Debt Collection Act of 1982. The late payment charges will accrue from the 60th calendar day after the final date for submitting applications for contract buy out. The Regional Forester shall issue refunds or supplemental billings as necessary if the final buy-out cost differs from the amont charged in the initial estimated billing.

§ 223.182 Disputes.

Forest Service administrative decisions implementing the procedures of this subpart are subject to administrative review under 36 CFR 211.18.

Dated: June 20, 1985.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

Note.—Appendix A will not be shown in the Code of Federal Regulations.

Appendix A to Subpart E—Administration of Buy Out Provisions

The Forest Service Manual, Chapter 2400, Timber Management, is being amended to provide the following guidelines for administration of the contract buy out porgram.

1. *Regional Forester Responsibility.* The Regional Forester who receives an application for contract buy out will review it to verify the data submitted and to determine the appropriate buy-out costs and volume entitlement. The Regional Forester must reject those applications to buy out contracts not meeting the buy out requirements. In reviewing an application, a Regional Forester shall coordinate data verification and the calculation of buy out charges and volume entitlement with the Bureau of Land Management and other applicable Forest Service Regions if the purchaser's request for buy out includes sales from both agencies and/or more than one Forest Service Region. The Regional Forester shall notify the purchaser of the acceptance or rejection of contracts as qualifying under the act and implementing regulations, and the action which must be taken to bring partially operated sales to a logical stopping point. The Regional Forester will approve the application for contract buy out upon determination that the information in the application appears to be complete, accurate, and in compliance with the standards established in 36 CFR Part 223, Subpart E.

The Regional Forester may delegate a Forest Supervisor authority to review and act on a purchaser's buy out request where a purchaser holds only national forest timber on a single national forest.

2. *Verification of Purchaser's Net Book Worth.* Regional Foresters shall implement a program to verify net book worth data submitted by purchasers on a sample basis.

3. *Responsibility of Contracting Officers.* Contracting officers shall review the timber sales included in applications for buy out. They shall estimate the remaining net merchantable sawtimber volume as of the specified dates and recommend Regional Forester acceptance or rejection of each such sale requested for buy out. They shall also recommend to the Regional Forester the measures necessary for a purchaser to complete work to logical stopping points on partially performed sales which they administer.

4. *Eligibility of Partially Performed Contracts.* Partially performed contracts are eligible for buy out. However, before they are bought out, operations which the purchaser has initiated under the contract must be brought to logical stopping points. The objective is to place partially performed sales in a condition that minimizes the risk that significant

resource damage will occur, pending resale of the included timber. Work performed on partially cut units must be completed before a partially performed contract can be bought out. Exception to this general rule may be made when the Regional Forester determines that the remaining timber can be economically operated as part of a subsequent sale. For example, a cutting unit planned for logging to two highlead settings could be accepted if logging to one setting has been completed but logging on the second setting has not been started. Generally, a purchaser must remove or yard and deck timber which has been felled to facilitate prompt resale and removal; however, this requirement can be waived if the timber is not subject to rapid deterioration and can be economically operated as part of a subsequent sale. Decking should be required only where ground conditions and space make this option practical.

a. *Rejection of Contracts.* A Regional Forester shall reject buy out of a partially performed contract where, in the Regional Forester's judgment, the purchaser's operations have left the unharvested portion of a sale in a condition which is substantially unrepresentative of the original sale as a whole in terms of species, logging methods or other conditions, and where accepting the return of such contract would seriously disadvantage the Government. This provision is designed to prevent a purchaser from buying out of a sale that has been high-graded. Thus, where removal of individual species, haphazard entry of cutting units, or similar actions have seriously impacted the economic viability of the remaining timber or significantly increased future operating costs, buy out of the sale should be rejected. The following illustrate situations in which return of partially operated sales should be rejected.

(1) A purchaser has removed very high value species, on which little or no bid premium has been placed, while leaving relatively low value species on which it has placed a high bid premium.

(2) A purchaser has logged the bulk of a sale but stopped logging with insufficent volume remaining to enable a new sale to economically cover the cost of moving needed logging equipment into the area.

(3) The remaining timber in a partially operated sale could not be resold as is or in conjunction with adjacent timber because the purchaser's operations made the remaining volume uneconomical.

Note that contract rejection requires a determination both that the remaining timber is substantially unrepresentative and that accepting return would be to the serious disadvantage to the Government. Since the act was passed in specific recognition of the decline in markets, the fact that the timber will sell for less on reoffering is not a basis for rejection.

The Regional Forester shall document the determination as to whether or not the unharvested volume is substantially representative or unresentative of the original sale as a whole, and whether or not, if unrepresentative, return of the contract would seriously disadvantage the Government.

b. *Logical Stopping Points.* If a purchaser's operations have created a need for additional work, such as contractually required erosion control or brush disposal, this work must be completed before the remainder of the contract can be bought out. Similarly, if work has begun on a timber sale road, the work must be completed at least to the point that soil exposed by the road construction and the roadbed are stabilized. Where excavation is under way, this may require completion of excavation on that section of the road in order to permit proper drainage. Likewise, such work as steam protection and measures to allow fish passage and wildlife movement must be completed before a contract may be bought out. Completion of work to a logical stopping point should leave the sale area in a condition where no significant resource damage should occur because of unfinished or incomplete mitigation measures.

c. *Completion of Cutting Units.* If the Regional Forester determines that completion of a partially harvested unit or part of such a unit is necessary before the remainder of the contract can be bought out, the purchaser, upon agreement by the contracting officer, may fulfill this obligation by falling, yarding, and decking the timber at approved landings, if the remaining timber is not subject to rapid deterioration and is suitable for resale. Such volume will be subject to the buy out charge. If these conditions are not feasible or are not timely met, the purchaser must remove the timber from the sale area at current contract rates in order to buy out the contract. In addition, the purchaser must meet other contract requirements such as erosion control and slash disposal for the unit.

5. *Deterioration Loss.* The Regional Forester may accept for buy out a partially performed sale containing felled timber which has deteriorated if the purchaser, in addition to the buy out charge, pays for the volume of felled timber lost through deterioration at current market rates, unless the volume of felled timber lost to deterioration was subject to a priority removal date. Payment shall be at current contract rates for the volume of felled timber lost by deterioration which was subject to a priority removal date. The Forest Service will establish the value and volume of deteriorated timber and include the volume estimated to have deteriorated in the contract volume upon which the buy out charge is calculated.

6. *Average Market Yield Rates.* In order to facilitate administration of the alternate payment method, the Chief will furnish Regional Foresters the current value of the "average market yield of outstanding Treasury obligations with remaining years to maturity of five years." This information is calculated monthly by the Treasury Department and is available upon request. The rate varied btween 11⅜ and 13½ percent during 1984. The April 1985 rate was 11½ percent.

7. *Availability of Information.* The Forest Service will provide confidentiality of material submitted, including a showing of net book worth, to the maximum extent allowed by law. All requests for information submitted pursuant to the Federal Timber Contract Payment Modification Act will be handled according to the Freedom of Information Act (5 U.S.C. 552, as amended), with full consideration of available exemptions from disclosure.

8. *Disputes.* Forest Service administrative decisions in implementing the act and implementing the rules are subject to administrative review under 36 CFR 21.18. Disputes that arise under the terms of qualifying contracts or qualified defaulted contracts will be resolved under the current provisions applicable to the specific contract.

[FR Doc. 85-15330 Filed 6-26-85; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Assessment Notice; Federal Timber Contract Payment Modification Act; Contract Buy Out Provisions

An environmental assessment, decision notice, and finding of no significant impact that discusses the rules and policies developed to implement the contract buy out provisions of the Federal Timber Contract Payment Modification Act is available for public review during regular business hours in the Director's Office, Timber Management Staff, at the following addresses: South Agriculture Building, Room 3207, 12th and Independence Ave., SW., Washington, DC; Federal Building, Missoula, Montana; 11177 W. 8th Avenue, Lakewood, Colorado; Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico; Federal Building, 324 25th Street, Ogden, Utah; 630 Sansome Street, San Francisco, California; 319 SW Pine Street, Portland, Oregon; 1720 Peachtree Road, NW., Atlanta, Georgia; 310 W. Wisconsin Avenue, Milwaukee, Wisconsin; and Federal Office Building, Juneau, Alaska.

Dated: June 3, 1985.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 85-15331 Filed 6-26-85; 8:45 am]

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federal register

Thursday
June 27, 1985

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 5470

Forest Management; Modification of Federal Timber Contracts; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5470

[Circular No. 2584]

Forest Management; Modification of Federal Timber Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes conditions and procedures for modification of certain Federal timber contracts that were awarded by the Bureau of Land Management. The regulations implement sections of the Federal Timber Contract Payment Modification Act of 1984 (98 Stat. 2213) which provide that purchasers of certain Federal timber contracts may return a portion of the volume in the purchaser's Federal timber contracts upon payment of the buy-out charges specified in the Act.

EFFECTIVE DATE: June 27, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (100), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles Frost, (202) 653–8864.

SUPPLEMENTARY INFORMATION: This final rulemaking was developed to implement the Federal Timber Contract Payment Modification Act (98 Stat. 2213) which was enacted on October 16, 1984. The Act directs the Secretary of the Interior and the Secretary of Agriculture to permit a requesting purchaser to return to the Government a volume of the purchaser's timber upon payment of a buy-out charge as specified in the Act. The Act also establishes conditions which must be met by purchasers in order for a timber sale to qualify for buy-out. In addition, the Act ratifies the "grace periods" established by the Secretary of the Interior and the Presidential Memorandum dated July 28, 1983, extending the expiration of certain timber contracts. In 1981, the Bureau granted a six month grace period to certain timber contracts, that was later extended by the Secretary of the Interior. The Bureau had decided not to negotiate out of the contracts because it was preceived not to be in the best interest of the Government at that time. On August 4, 1983, the Bureau granted a five-year extension of the grace period in response to the President's program of July 28, 1983. It is the grace period process to which section 2(b)(1) of the Act applies.

A proposed rulemaking to establish procedures to modify certain Federal timber contracts that were awarded by the Bureau and to permit the buying-out by the purchaser of certain volumes of timber in these contracts upon payment of specified buy-out charges, was published in the **Federal Register** on December 5, 1984, (49 FR 47511). The proposed rulemaking was published with an initial public comment period of 30 days. A 30-day extension of the comment period was published in the **Federal Register** on December 31, 1984, (49 FR 50744).

The Federal Timber Contract Payment Modification Act applies to the Forest Service also. That agency is also preparing regulations to implement the Act.

The Department of the Interior received 44 comments from the public concerning the proposed regulations. Twenty-five were from timber purchasers, five from forest industry associations, six from law firms, three from accounting firms, one from the American Institute of Certified Public Accountants, two from consulting forestry firms, and two from a bonding company.

Generally, the comments supported the provisions of the proposed rulemaking. There were numerous suggestions for modification of the proposed rulemaking concerning specific sections or issues. These are addressed below.

Section 5475.0–5 Defintions. Several comments requested clarification of the definition of the term "purchaser" as used in this subpart, particularly as it relates to the Bureau's treatment of affiliates in determining volume entitlement and buy-out charges. After considering these comments, the Department of the Interior has modified the definition to state that it includes affiliates when used for purposes of determining volume entitlement and buy-out charges.

Numerous comments took issue with the definition of the term "reasonable rates and terms" which was defined in the proposed rulemaking as being within 3 percentage points above the average market yield of outstanding Treasury obligations with 5 years to maturity. The comments suggested lowering the rate in the definition to rates that range from a 5-year Treasury rate to 1 or 2 percentage points above that rate. The Department of the Interior has considered these comments in light of the objectives of the Act.

One of the objectives of the Act was to make the Federal government the lender of last resort. The Department of the Interior therefore has concluded that the proposed definition of the term "reasonable rates and terms" places the interest rate threshold at a level sufficiently high as to ensure that those seeking financing will undertake the effort to secure financing the private sector and shall rely on the Federal government only in those situations where capital is not available to them. The final regulations retain the definition used in the proposed rulemaking.

The definition of the term "authorized officer" has been removed because it is defined in § 5400.0–5(c).

Section 5475.1 Contract modification applications. The comments noted that the proposed rulemaking did not provide for a means to modify a Bureau of Land Management buy-out application in cases where a purchaser also applies for a buy-out on Forest Service sales but, on one or more Forest Service sales being rejected, subsequently wishes to apply to the Bureau for additional sales. A number of commenters requested that the Bureau provide some flexibility to deal with such cases. After considering these comments, the Department of the Interior has added a provision in final rulemaking which permits a purchaser to apply for additional Bureau sale buy-outs. However, after the 90-day application period sales already applied for with the Bureau may not be deleted.

Section 5475.2 Qualifications and volume entitlement. Some comments suggested that the proposed rulemaking should include a provision for a purchaser to "buy down" volume to meet the 200 million board feet ceiling on buy-outs when their best combination of sales for buy-out exceeds the 200 million board feet ceiling. The Department of the Interior has considered these comments and has added a new § 5475.2–3(b) to the final rulemaking allowing purchasers to buy down volume to meet the 200 million board feet limit at the original contract price rate.

Other comments suggested that the proposed rulemaking did not provide coverage for legitimate successors in interest. The Department of the Interior has determined that the language in the proposed rulemaking adequately treats legitimate successors in interest and therefore no change was made in the final rulemaking.

Section 5475.3 Determination of buy-out charge. Several comments suggested that the description of the method used to compute purchaser loss for the purpose of determining contract buy-out cost in the proposed rulemaking was unclear. The language in this section has been rewritten to clarify the calculation.

providing a more specific description of the values to be employed in making the computation in final rulemaking.

Comments received also expressed the view that the timber measurement method in the proposed rulemaking should be changed from the Bureau of Land Management's 16-foot log scale to the 32-foot log scale used by the Forest Service. Other comments supported the Bureau's 16-foot log scale, citing the fact that it was the method of measurement used on the original contracts. After considering these comments, the final rulemaking retained the 16-foot log scale system found in the proposed rulemaking.

Comments also suggested the use of third party cruises in determining volume in dispute for buy-out purposes. Because lump sum timber sale contracts are very closely estimated, the Department of the Interior does not anticipate any significant disputes concerning the volume of timber qualifying for buy-out. Consequently, the suggestion to use third party cruises to determine volume has not been adopted in the final rulemaking.

Some comments raised the point that the proposed rulemaking was silent on whether buy-out charges were to be determined on a contract-by-contract basis or on the total amount being bought out. Some comments urged adoption of the latter since under this approach the cost would be less to the purchaser. After considering these comments, the final rulemaking has been clarified to indicate that buy-out costs will be determined on a contract-by-contract basis. In making this determination, the Department of the Interior has concluded that a major objective of the Act is to minimize loss to the Federal government, and therefore a contract-by-contract approach best reflects the legislative objectives as well as consistency with existing policy.

Numerous comments objected to the requirements of § 5475.3(c) of the proposed rulemaking concerning the mandatory audit by an independent certified public accountant of a company's financial statement. The comments stated that this mandatory audit was too rigorous and expensive and therefore not appropriate in light of the objectives of the Act. The comments recommended use of a certified public accountant's report of financial statements as an alternative. The comments also stated that only the review of an annual financial statement was useful because quarterly statements are generally not examined by an independent certified public accountant. The comments also noted that such quarterly statements generally lacked conclusive information.

After consideration of these comments, the Department of the Interior has revised § 5475.3(c) of the final rulemaking. The final rulemaking has been amended to accept a report of a company's annual financial statement by a certified public accountant. The reference to quarterly reports has been deleted. This section of the final rulemaking has been revised and reorganized to clarify the requirements for submission of financial statements.

The provisions of § 5475.3(c) of the proposed rulemaking concerning the treatment of records and information submitted to the Bureau of Land Management for purposes of complying with the provisions of the Act have been further revised. The Department of the Interior has determined that much information, including a showing of net book worth, can be provided while still maintaining confidentiality of those materials that the law requires. Requests for information submitted pursuant to the Federal Timber Contract Payment Modification Act will be granted in accordance with the requirements of the Freedom of Information Act (5 U.S.C. 552, as amended) and recognition of exemptions from disclosure contained in that Act.

Several comments expressed the view that due to diligent logging of much of the relief-eligible timber sales, the unused road allowance could not be completely used, and that sale of these allowances to other qualified purchasers appeared doubtful. Therefore they suggested that the final rulemaking be amended to allow these road allowances to be applied to non-grace period and new timber sales. After considering these comments, the final rulemaking has been rewritten to permit application of road allowances to non-grace period timber sales and new timber sales. However, this is subject to the provision that the surplus road allowance not be applied to other sales until after September 30, 1985, and that no more than 33⅓ percent of it be applied in any subsequent fiscal year, except that in any year the amount of excess allowance that may be credited may equal one payment on one timber sale.

Section 5475.4 Conditions for return of timber sale contracts. Several comments suggested that the proposed rulemaking's treatment of "logical stopping point" was too rigid. The Department of the Interior has considered these comments and the final rulemaking has been revised to provide the option of payment for volume loss in deteriorated felled timber at current market rates in lieu of logging and removing such material.

In order to enable purchasers to plan their 1985 operations as soon as possible, to schedule their personnel and equipment to meet available markets and to know which contracts they will retain, it is important that the buy-out process begin as soon as possible. In addition, in accordance with section 2(a)(6)(B) of the Act, this final rulemaking requires purchasers to submit buy-out requests to the appropriate Secretary within 90 days after publication of such final regulations in the **Federal Register**. Making the regulations effective immediately gives purchasers the benefit of the full 90-day period. For these reasons it is not feasible to delay implementation of these regulations. Rather, it is in the public interest that they become effective immediately upon publication in the **Federal Register**.

The principal authors of this final rulemaking are Charles R. Frost, Division of Forestry, and David Estola, Oregon State Office, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. It has also been determined that this rulemaking will not have a significant negative effect on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 et seq.). Any economic effects of the regulations will be positive.

The information collection requirements contained in this proposed rulemaking were submitted to the Office of Management and Budget for clearance under 44 U.S.C. 3507 and have been approved and assigned clearance number 1004–0152.

List of Subjects in 43 CFR Part 5470

Administrative practice and procedure, Forests and forest products, Public lands, Reporting requirements.

Under the authority of the Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98–498), Group 5400, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

April 22, 1985.

1. The "Note" that appears after the title to Group 5400 is amended by removing the phrase "and 1004–0113"

and replacing it with the phrase ", 1004–0113 and 1004–0152."

PART 5470—[AMENDED]

2. Part 5470 is amended by adding a new Subpart 5475 to read:

Subpart 5475—Federal Timber Contract Payment Modification

Sec.
5475.0–3 Authority.
5475.0–5 Definitions.
5475.1 Contract modification applications.
5475.2 Qualifications and volume entitlement.
5475.2–1 Qualification.
5475.2–2 Volume entitlement.
5475.2–3 Volume exceptions.
5475.3 Determination of buy-out charge.
5475.4 Conditions for return of timber sale contracts.
5475.5 Alternative method of payment.
5475.6 Payment date.
5475.7 Protests and appeals.

Authority: Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618).

Subpart 5475—Federal Timber Contract Payment Modification

§ 5475.0–3 Authority.

The Federal Timber Contract Payment Modification Act of October 16, 1984, (98 Stat. 2213) authorizes and directs the Secretary of the Interior to permit a requesting purchaser to return to the Government a volume of the purchaser's qualifying timber contracts upon payment or arrangement for payment of a buy-out charge.

§ 5475.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213).

(b) "Purchaser" means a holder of a contract to purchase timber from the Secretary of the Interior. When used for purposes of determining volume entitlement and buy-out charges in §§ 5475.2–2 and 5475.3 of this subpart, respectively, the term purchaser includes affiliated concerns as a single entity.

(c) "Purchaser's loss" means current delivered log cost minus current delivered log value, as of October 16, 1984, all as determined by the authorized officer.

(d) "Net book worth" means the excess of the assets of a purchaser over the liabilities. Net book worth for purchasers or their affiliates which are publicly held corporations shall be as of the date of their most recent annual report filed prior to publication of this rule on Form 10–K with the Securities and Exchange Commission. Net book worth for purchasers or their affiliates which are not publicly held corporations shall be as of the purchaser's or affiliate's financial statement for the most recent fiscal year prior to publication of this final rulemaking and be of a date of no more than 15 months prior to the date of purchaser's application for contract buy-out. Net book worth shall not include the value of any outstanding federal timber sale contracts.

(e) "Independent certified public accountant" means an individual authorized by a government agency (generally a state agency) to render an opinion on the propriety of financial statements. Such an individual may practice as a sole practitioner or as a member of a firm of certified public accountants.

(f) "Board feet of net merchantable volume" means the amount of merchantable timber remaining on a sale area based on Bureau 16-foot timber measurement standards.

(g) "Affiliates". Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties that controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Concerns affiliated at any time during the period June 1, 1984, to September 30, 1984, shall be considered affiliates for determining purchaser's net book worth and volume entitlement. A purchaser forming an affiliate after September 30, 1984, and prior to the time when the purchaser determines its net book worth, shall treat such organization as an affiliate for purposes only of determining its net book worth.

(h) "Qualifying contracts" means Bureau sales contracts bid prior to January 1, 1982, and held as of June 1, 1984.

(i) "Volume entitlement" means the aggregate amount of Bureau and Forest Service net merchantable volume of timber which may be returned to the United States subject to a buy-out charge.

(j) "Conditional contract" means an otherwise qualifying contract that is proposed for buy-out on which harvest and/or road construction activities have commenced.

(k) "Reasonable rates and terms" means interest rates that are within 3 percentage points above the average market yield of outstanding treasury obligations with remaining years to maturity of 5 years as reported by the U.S. Treasury; and having terms of 5 years.

§ 5475.1 Contract modification applications.

(a) The authorized officer shall prepare a modification application package for each Bureau timber sale purchaser, including affiliates holding contracts that qualify for termination under the Act. Application packages for purchasers holding qualifying contracts in more than one State shall be prepared by the authorized officer having the greatest volume under Bureau qualifying contracts for individual purchasers. The authorized officer shall provide timber sale statistics, purchaser loss, and contract overbid information to be included in the modification application. Purchasers who elect to pay less than the maximum buy-out charge as specified in section (3)(A) of the Act, shall submit a net worth determination as part of the completed application package (see § 5475.3(c)). Purchasers that also hold Forest Service contracts that qualify for termination under the Act shall include a complete copy of each Forest Service modification application when submitting a Bureau application to the authorized officer.

(b) In order to be accepted, applications shall be received by the authorized officer within 90 days of the publication date of either this regulation or the regulation of the Secretary of Agriculture issued pursuant to the Act, whichever is later. The application may be revised within the 90-day period. After the 90-day period sales cannot be deleted from the application. The addition of qualifying sales may be considered after the 90-day period only when sales are deleted from the purchaser's Forest Service application and the purchaser elects to use additional Bureau sales to obtain full entitlement. Any request to add sales shall be received by the authorized officer no later than 30 days after deletion from the Forest Service application.

(c) If the purchaser has filed for bankruptcy, the application shall be approved by the Bankruptcy Court. Applications containing sale in trust shall have the signature of the assignees.

§ 5475.2 Qualification and volume entitlement.

§ 5475.2–1 Qualification.

To qualify for buy-out under this subpart, a timber sale contract must have been bid prior to January 1, 1982, and be held by the requesting purchaser as of June 1, 1984. In cases where such a contract was defaulted after January 1, 1981, such a contract may qualify for buy-out under this subpart provided: (a) settlement for damages has not been

reached between the purchaser and the United States; and (b) the purchaser's loss on all of its qualifying timber sale contracts as determined under § 5475.3(a) of this subpart is in excess of 50 per centum of the net book worth of the purchaser.

§ 5475.2-2 Volume entitlement.

Except as provided in § 5475.2-3 of this subpart:

(a) A purchaser holding qualifying contracts with more than 27.3 million board feet of net merchantable timber shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of 200 million board feet. The total remaining volume on Bureau and Forest Service timber sale contracts as of January 1, 1982, as set forth in the appropriate agency's qualified timber sale contracts, shall be used to establish buy-out entitlement.

(b) A purchaser holding qualifying contracts with 27.3 million board feet or less of timber qualified under section 5475.2-1 of this subpart is entitled to buy-out up to 15 million board feet or one contract, whichever is greater in volume. The total remaining volume on Bureau and Forest Service timber sale contracts as of January 1, 1982, as set forth in the appropriate agency's qualified timber sale contracts shall be used to establish buy-out entitlement.

§ 5475.2-3 Volume exceptions.

(a) The percentage limitation of § 5475.2-2(a) or the volume limitation of § 5475.2-2(b) of this section may be exceeded by a volume amount not to exceed the volume of the smallest contract bought out by the purchaser, provided the volume limitation of 200 million board feet is not exceeded. This provision shall apply only in cases where the purchaser could not otherwise attain his/her percentage of volume entitlement.

(b) A purchaser may buy down volume of one contract necessary to take full advantage of the 200 million board feet limitation by paying the contract price per thousand board feet or, on a sale where harvest has begun, paying and removing that volume of timber in excess of the 200 million board feet limitation at the contract rate. Removal of additional timber must be consistent with § 5475.4 of this subpart.

§ 5475.3 Determination of buy-out charge.

To determine the buy-out charge for qualifying timber contracts the authorized officer shall first establish the purchaser loss, determine the contract overbid, and obtain from the purchaser a statement of net worth if required under section 3(a) of the Act.

(a) Purchaser loss shall be determined by the authorized officer by subtracting current delivered log value from current delivered log cost on a qualifying contract. Current delivered log value will then be determined by a method which adjusts the original appraised value of each species to October, 1984, values through factors representing value changes in Bureau or Forest Service index sales existing at the time of the original sale and for the month of October, 1984.

(b) Contract overbid shall be established by the authorized officer as follows:

(1) On qualifying contracts where timber has not been removed, the authorized officer will determine the contract overbid by subtracting the total advertised contract price of all species from the total bid price of all species.

(2) On contracts where timber has been removed, the contract overbid for the remaining timber will be determined by the authorized officer by establishing an overbid rate. The overbid rate shall be determined by dividing the contract overbid for the total sale by the total advertised volume.

The overbid rate will be multiplied by the current remaining volume to obtain the contract overbid on the remaining timber.

(c)(1) Purchasers requesting to use net book worth formulas to determine the buy-out charge shall submit: (i) A copy of their most recent consolidated financial statements disclosing the net book worth of the purchaser and affiliates; (ii) A schedule of net book worth that combines the consolidated net book worth of the purchaser and affiliates, as provided in paragraph (c)(1)(i) of this section, and excludes the value of any outstanding federal timber sales contracts included in the determination of net book worth and eliminates intercompany transactions and profits or losses. Except as noted in paragraph (c)(2) of this section, an auditor's report prepared by an independent certified public accountant shall accompany the purchaser's and affiliate's financial statements. The auditor's report may be in the form of an auditor's standard report based upon an examination of the financial statements in accordance with generally accepted auditing standards, citing the scope of the audit and expressing an opinion that the financial statements are fairly presented in conformity with general accepted accounting principles applied on a consistent basis. The purchaser may elect to submit an auditor's review report prepared by an independent certified public accountant in accordance with the standards for review established by the American Institute of Certified Public Accountants.

(iii) The purchaser may submit on his own initiative and the authorized officer may request additional explanatory matter to clarify, disclose, or highlight any circumstances that have or may have a material effect on the purchaser's net book worth or to aid in the interpretation of the purchaser's financial statements. The authorized officer's request for additional information shall be restricted to material essential for the verification of the purchaser's net book worth.

(2) Where the purchaser has filed for bankruptcy and can demonstrate to the authorized officer that he/she cannot provide a financial statement as set forth in this section, the purchaser may submit a notarized copy of the documentation of financial statements required by and used in the bankruptcy proceedings to establish the purchaser's net book worth.

(3) The purchaser is required to maintain all financial records used for determining net book for a period of 3 years following submission of the audit report.

(d) In order to calculate the buy-out charge, the authorized officer shall use the net book worth of each purchaser as provided under § 5475.3 of this subpart, and calculate the buy-out charge and the total amount to be paid by the purchaser to the government using the following formulas on a contract-by-contract basis:

(1) When the purchaser loss exceeds 100 per centum of the net book worth of the purchaser, the buy-out cost shall be $10 per one thousand board feet of currently held volume bought out;

(2) When the purchaser loss exceeds 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out:

(3) When the purchaser loss is 50 per centum or less of the net book worth of the purchaser the buy-out cost shall be:

(i) 15 per centum of the contract overbid for the first 125 million board feet; and

(ii) 20 per centum of the contract overbid for the next 25 million board feet; and

(iii) 25 per centum of the contract overbid for the next 25 million board feet; and

(iv) 30 per centum of the contract overbid for the next 25 million board feet not to exceed 200 million board feet of qualifying volume; and

(v) At least $10 per thousand board feet.

(4) Purchaser shall designate the order of contracts to buy out under (d)(3)(i) through (iv) of this section including

contracts that must be split between two categories.

(e) The purchaser shall be billed by the authorized officer and shall make full payments or make arrangement for payment under § 5475.5 of this subpart for buy-outs prior to the acceptance of returned contracts.

(f) Where a purchaser has completed any portion of road construction which may be logically broken out of the timber sale appraisal allowances and where the road construction is acceptable under conditional contracts of this subpart, the authorized officer shall notify the purchaser of the amount of the road allowance which may be credited. In cases where timber has been removed from the sale area, the authorized officer shall reduce the road allowance. The amount of the reduction shall equal the volume of timber removed in thousands of board feet multiplied by the allowance per thousand board feet (Mbf) for road construction in the timber sale appraisal. These road allowances shall be credited against the total buy-out charge. Road allowances in excess of the total buy-out charge shall be credited against timber sales that were extended under Instruction Memorandum No. 83–743 pursuant to the President's program of July 28, 1983. If there is excess road construction allowance remaining after applying the allowance to the purchaser's buy-out charge and to the purchaser's grace period contracts, then the excess allowance may be credited after September 30, 1985, against any timber sale; however, no more than 33⅓ percent of the remaining excess allowance as of September 30, 1985, may be credited during any subsequent fiscal year, except that in any year the amount of excess allowance that may be credited may equal one payment on one timber sale.

§ 5475.4 Conditions for return of timber sale contracts.

(a) Contracts returned pursuant to this subpart which have had no harvesting or road construction work shall be returned in full. The purchaser shall not retain any portion of the timber sale contract.

(b) Contracts returned pursuant to this subpart under which harvest or any type of road work has begun may be returned to the authorized officer subject to his or her authority to reject the contract or to accept it upon compliance with conditions to be established by the authorized officer. The authorized officer may reject a contract if he or she determines that the remaining unharvested portion is substantially unrepresentative of the original sales as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would not be in the public interest. Other reasons for rejection may include, but are not limited to, such considerations as: (1) amount of value loss due to deterioration in felled timber; (2) impractical remaining harvest unit resulting from purchaser failing to complete an entire logging unit; (3) road construction determined not to be at a logical stopping point.

(c) The authorized officer may accept payment for the amount of volume loss in felled timber in lieu of requiring removal of the felled timber; provided that the remaining felled timber constitutes a practical harvest unit. Payment for volume loss in felled timber shall be based on current market price applied to volume loss as determined by the Bureau. Such payment shall be in addition to payment of the buy-out cost for the volume of timber affected by deterioration.

(d) The authorized officer shall include conditions for acceptance of the returned contract and a schedule for its completion as part of the purchaser's modification application package. Conditionally returned contracts shall not be accepted by the authorized officer until the purchaser has fulfilled all the conditions established in the modification application. If the purchaser does not fulfill these conditions in accordance with the schedule for their completion, the sale shall no longer qualify for buy-out under the Act and shall terminate on the date scheduled for its completion or the date provided in the agreement under the grace period extension program, whichever is later.

§ 5475.5 Alternative method of payment.

If unable to obtain sufficient credit elsewhere, a purchaser may finance the buy-out charge by paying 5 per centum of the buy-out charge at a time specified by the buy-out agreement and paying the remainder in equal quarterly payments over a period not to exceed 5 years. These additional requirements shall apply:

(a) The purchaser shall provide documentation to the authorized officer of inability to obtain private financing at reasonable rates and terms as defined in this subpart, from at least two Federal or state chartered financial Institutions engaged in providing financing to the timber industry and one from the lending institution with which the purchaser usually transacts business.

(b) Upon request, the purchaser shall make available copies of loan papers for loans acquired within six months of the date of publication of the final rules and for loans acquired between the publication date and submittal of the purchaser's buy-out request, which have reasonable interest rates, as defined in § 5475.0–5(k) of this subpart.

(c) The interest rate shall be adjusted with each payment to equal the average market yield of outstanding Treasury obligations with 5 years remaining to maturity. Such information shall be obtained by the authorized officer from the United States Department of the Treasury.

(d) The purchaser shall sign a promissory note agreeing to the terms and conditions of payment.

(e) Payment shall be secured by bond deposited securities or other forms of security acceptable to the authorized officer in an amount sufficient to cover the entire buy-out payment owing on those Bureau contracts. If a bond of corporate surety is used, the payments bond shall provide that, if the purchaser fails to make payments as required by this supbart, the surety shall make payment of the entire balance including any required interest and late payment charges. As each payment is made, the bond may be adjusted downward to an amount equal to the unpaid balance of the buy-out, including any required interest.

(f) The method of payment shall be the same as called for in the original purchase contract unless the amount is over $10,000. For amounts over $10,000 the Bureau may require remittance by wire transfer. The place of payment for other than wire transfer shall be specified in the buy-out agreement.

§ 5475.6 Payment date.

The purchaser shall pay either the total buy-out charge or, on qualifying, the initial installment under § 5475.5 of this subpart by the 60th calendar day after the final date for submitting applications for contract buy-out. If payment is not received by the authorized officer by the 60th calendar day, the purchaser shall pay late charges on the outstanding billed amount, as prescribed in the Debt Collection Act of 1982 (96 Stat. 1749). Late payment charges shall accrue from the 60th calendar day after the final date for submitting applications for buy-out, or where the alternate payment method is used, shall accrue from the date the payment was due.

§ 5475.7 Protest and appeals.

(a) Any appeal filed prior to the execution of a buy-out agreement shall be in accordance with the provisions of 43 CFR Part 4.

(b) Any dispute relating to an executed buy-out agreement shall be subject to the provisions of the Contract Disputes Act of 1978 (92 Stat. 2383).

[FR Doc. 85–15434 Filed 6–26–85; 8:45 am]

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federal register

Thursday
June 27, 1985

Part IV

Environmental Protection Agency

21 CFR Parts 193 and 561
40 CFR Part 180

Pesticides; Tolerances in Animal and Human Foods, and on Raw Agricultural Commodities; Chlorpyrifos-Methyl; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP OH5277/R770; PH-FRL 2857-3]

Pesticides; Tolerances in Animal and Human Foods; Chlorpyrifos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish food and feed additive regulations to permit the combined residues of the insecticide chlorpyrifos-methyl and its metabolite in or on certain food and feed items. These regulations to establish maximum permissible levels for the combined residues of the insecticide in or on the commodities were requested in a petition submitted by the Dow Chemical Co.

EFFECTIVE DATE: Effective on June 27, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 23, 1980 (45 FR 70313), which announced that Dow Chemical Co., PO Box 1706, Midland, MI 48640, had submitted a food/feed additive petition (FAP) to EPA proposing to establish food/feed additive regulations for the combined residues of the insecticide chlorpyrifos-methyl (*O,-O*-dimethyl-*O*-(3,5,6,-trichloro-2-pyridyl) phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on corn oil at 160 parts per million (ppm); milling fractions (except flour) of barley, oats, sorghum, and wheat at 20 ppm; and milling fractions of rice at 30 ppm.

In the **Federal Register** of December 1, 1982 (47 FR 54159), EPA gave notice that Dow Chemical Co. amended the petition by increasing the proposed tolerance levels of milling fractions (except flour) of sorghum and barley to 90 ppm, milling fractions (except flour) of oats to 130 ppm, milling fractions (except flour) of wheat to 30 ppm, and corn soapstock to 40 ppm.

No comments were received in response to the notices of filing.

On April 11, 1985, Dow Chemical Co. further amended this petition by withdrawing the proposed feed additive tolerances for corn oil and corn soapstock.

The data submitted in the petitions and other relevant material have been evaluated and discussed in a related document [PP OF2423/R769], appearing elsewhere in this issue of the **Federal Register**, establishes tolerances for the combined residues of the above insecticide for the various raw agricultural commodities appearing elsewhere in this issue of the **Federal Register**. Further, in that companion document, is an explanation of the Agency's decision to grant conditional registration of chlorpyrifos-methyl products with the condition that additional, necessary mutagenicity data be submitted to and received by the Agency on or before July 1, 1985. Further, registration will be issued for a term to July 1, 1985 however, if these data are received by this date the registration will be extended to November 1, 1985. During this term the Agency expects to receive and evaluate these data and to conclude whether or not to extend the term of registration beyond November 1, 1985.

The metabolism of chlorpyrifos-methyl is adequately understood for the uses and an adequate analytical method, liquid chromotography, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the food and feed additive regulations are sought, and it is concluded that the insecticide may be safely used when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) et seq.). Therefore, the food and feed additive regulations are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels 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 24945).

List of Subjects in 21 CFR Parts 561 and 193

Animal feeds, Pesticides and pests.

Dated: June 18, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore 21 CFR, Chapter I, is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.471 is added to read as follows:

§ 193.471 Chlorpyrifos-methyl.

Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl (*O,-O*-dimethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following processed feeds when present therein as a result of application to stored grains:

Foods	Parts per million
Barley milling fractions (except flour)	90
Oats milling fractions (except flour)	130
Sorghum milling fractions (except flour)	90
Rice milling fractions (except flour)	30
Wheat milling fractions (except flour)	30

2. In Part 561:

PART 561—[AMENDED]

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 561.437 is added to read as follows:

§ 561.437 Chlorpyrifos-methyl.

Tolerances are established for the combined residues of the insecticide

chlorpyrifos-methyl [*O,-O*-dimethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following processed foods when present therein as a result of application to stored grains:

Foods	Parts per million
Barley milling fractions (except flour)	90
Oats milling fractions (except flour)	130
Sorghum milling fractions (except flour)	90
Rice milling fractions (except flour)	30
Wheat milling fractions (except flour)	30

[FR Doc. 85-15642 Filed 6-26-85; 8:59 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP OF2423/769; PH-FRL 2857-4]

Pesticides in or on Raw Agricultural Commodities; Chlorpyrifos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide chlorpyrifos-methyl and its metabolite in or on stored grains. This regulation to establish maximum permissible levels for residues of chlorpyrifos-methyl in or on the commodities was requested in a petition submitted by the Dow Chemical Co.

EFFECTIVE DATE: Effective on June 27, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 23, 1980 (45 FR 70313), which announced that Dow Chemical Co., PO Box 1706, Midland, MI 48640, had submitted pesticide petition OF2423 to EPA proposing to establish tolerances for the combined residues of the insecticide chlorpyrifos-methyl [*O,-O*-dimethyl-*O*-(3,5,6-trichloro-2-pyridyl)] phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on certain commodities.

In the **Federal Register** of September 7, 1983 (48 FR 40433), EPA gave notice that Dow Chemical Co. had amended the petition by increasing and/or decreasing the tolerance levels as follows:

Commodities	Parts per million proposed initial tolerances	Proposed revised tolerances
Eggs	0.05	0.1
Fat of cattle, goats, and sheep	0.2	0.5
Fat of hogs and horses	0.3	0.5
Fat, meat, and meat byproducts of poultry	0.05	0.5
Milk, fat	0.1	1.25
Milk, whole	0.02	0.05
Meat of cattle, goats, hogs, horses, and sheep	0.1	0.5
Meat byproducts of cattle, goats, and sheep	1.0	0.5

There were no comments received in response to the notices of filing.

On April 11, 1985, Dow Chemical Co. amended the petition by withdrawing the proposed tolerance in or on corn grain.

Elsewhere in this issue of the **Federal Register** (FAP OH5277/R770), EPA is issuing a related document that proposes to establish food and feed additive regulations (21 CFR Parts 193 and 561) for residues of this insecticide and its cholin-esterase-inhibiting metabolite in the processed commodities rice milling fractions (except flour), sorghum milling fractions (except flour), barley milling fractions (except flour), oats milling fractions (except flour), and wheat milling fractions (except flour).

Since *O,O*-dimethyl-l*O*-(3,5,6,-trichloro-2-pyridyl)-phosphorothioate is a chlolinesterase inhibitor, this chemical is being added to the list under 40 CFR 180.3(e)(5).

The data submitted in the petition and other revelant material have been evaluated. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding/oncogenicity study with a cholinesterase (ChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0, and 3.0 mg/kg); a 2-year dog feeding study with a ChE NOEL of 0.1 mg/kg/day and a NOEL of 1 mg/kg/day at all levels tested (0.03, 0.1, 1.0, and 3.0 mg/kg) for systemic effects; a 2-year mouse oncogenicity study that was negative for oncogenic effects at all levels tested (2.25, 4.5, and 9.0 mg/kg/day); kg/day); a 3-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day; a rabbit teratolgy study that was negative for teratogenic effects at doses greater than 16 mg/kg/day; a rat teratology study that was negative for teratogenic effects at doses greater than 200 mg/kg/day; and a 90-day delayed neurotoxicity study in the hen that was negative at 500 mg/kg (highest dose tested).

The acceptable daily intake (ADI), based on the dog feeding study (ChE NOEL of 0.1 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.01 mg/kg bw/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 0.60 mg/day.

To assess these values against the theoretical maximum residue contribution (TMRC), the Agency used the traditional, old tolerance assessment system and the newly developed system. The old system is based on 1965 USDA household surveys for food consumption, in which consumption for each raw agricultural commodity is expressed as a percent of the total diet, on an "average" person of 60-kg of bw and an assumed daily diet of 1.5 kg. Also, this system only considers the general U.S. population and assumes that all the "farm gate" commodities are at tolerance levels.

The new system differs significantly from the former procedures (Tolerance Assessment System, 1984 Overview and Background Document). In this system's analysis, consumption is based directly on grams of food consumed per kilogram of body weight, and each surveyed individual's own body weight is used. Food consumption is estimated for the U.S. population and 22 subgroups (geographic, season of the year, age, sex, ethnic, and others), and consideration is given to residues in commodity components.

The old method results in a calculated TMRC for proposed tolerances of 1.149 mg/day for a 60-kg person with a 1.5-kg diet (or 0.019 mg/kg of bw). Under this method, the TMRC utilizes 192 percent of the ADI. However, these calculations are based on the outdated information noted above and assume that all the U.S. population consumes these "whole" grains at tolerance levels.

To achieve more realistic calculations of the TMRC and the occupied ADI, the new Tolerance Assessment System (TAS) was used. Under this method of analysis, the TMRC value for the proposed tolerances is 0.327 mg/day, and the occupied ADI is 54 percent for the average U.S. population. Because of differences in diets, the values for population subgroups are more or less than the average; for example,

nonnursing infants (less than 1 year old) and children (1 to 6 years old) have higher values (up to 114 percent of the ADI), and adults have lower values (as low as 32 percent of the ADI).

The Agency believes that these TMRC and percent-utilized ADI calculations from TAS are a more realistic reflection of the dietary exposure to residues from the proposed uses and associated tolerances because of the reasons discussed above. Actual dietary exposure to residues of this chemical may even be lower, since traditionally only 10 to 15 percent of all grain is treated. Secondly, all grain fractions used for human consumption are processed with heat during fractionation or before cooking. Residue levels used in the analysis are derived from raw (unheated) fractions. It is likely that heating will diminish residue levels and thus reduce human dietary exposure.

There is an outstanding data requirement, additional mutagenicity testing, which is necessary for the Agency to complete its toxicological assessment of this chemical. However, the Agency has decided to conditionally register, under section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, chlorpyrifos-methyl products for use as grain protectants with the condition that these mutagenicity data must be submitted to and received by the Agency on or before July 1, 1985. Also, registration will be granted for a term to this date. If these data are received by this date, registration will be extended for a term not to exceed November 1, 1985. During this term the Agency expects to receive and evaluate these data and to conclude whether or not the term of registration should be extended after November 1, 1985. The establishment of tolerances and registration of uses at this time will permit the use of chlorpyrifos-methyl on the current grain harvest.

The nature of the residue is adequately understood, and an adequate analytical method, liquid chromatography, is available for enforcement purposes.

Based on the above information considered by the Agency, the tolerances established would protect the public health. Therefore, the tolerances are being established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug and Cosmetic Act.

Interested persons are invited to submit written comments on the regulation. Comments must bear a notation indicating the document control number [PP OF2423/R679]. All written comments filed in response to this petition will be available in the Program Management and Support Division at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing tolerances or 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).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 18, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 364a.

2. In § 180.3 by adding new paragraph (d)(12) and by amending paragraph (e)(5) by adding and alphabetically inserting an entry for the insecticide, to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(12) Where tolerances are established for more than one pesticide having the metabolite 3,5,6-trichloro-2-pyridinol found in or on the raw agricultural commodity, the total amount of such residues shall not exceed the highest established tolerance for a pesticide having this metabolite.

* * * * *

(e) * * *

(5) * * *

* * * * *

Chlorpyrifos-methyl (*O,O*-dimethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate.

* * * * *

3. By adding new § 180.419, to read as follows:

§ 180.419 Chlorpyrifos-methyl.

Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl [*0,-0,*-dimethyl *0*-(3,5,6-trichloro-2-pyridyl)] phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	6.0
Cattle, fat	0.5
Cattle, meat	0.5
Cattle, mbyp	0.5
Eggs	0.1
Goats, fat	0.5
Goats, meat	0.5
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.5
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.5
Horses, mbyp	0.5
Milk, fat (0.05 ppm (N) in whole milk	1.25
Oats, grain	6.0
Rice, grain	6.0
Sheep, fat	0.5
Sheep, meat	0.5
Sheep, mbyp	0.5
Sorghum, grain	6.0
Wheat, grain	6.0

[FR Doc. 85-15643 Filed 6-26-85; 8:59 am]

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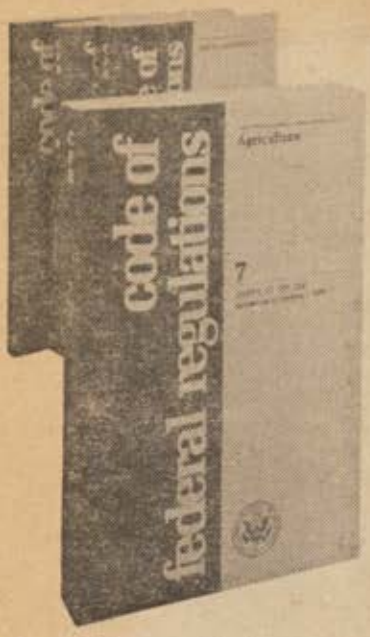

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