9-13-85
Vol. 50 No. 178
Pages 37343-37502

Federal Register

Friday
September 13, 1985

Selected Subjects

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Contents

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

Separate Parts in This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 919, 931, 981, 982, and 993

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 919 (Peaches, Colo.), 931 (Pears, Ore. and Wash.), 981 (Almonds, Cal.), 982 (Filberts/Hazelnuts, Ore. and Wash.), and 993 (Prunes, Cal.) for the 1985–86 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1985–June 30, 1986 (§§ 919.224; 931.220; 981.335 and 982.330); August 1, 1985–July 31, 1986 (§ 993.336).

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

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

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 919, 931, 981, 982, and 993

Marketing Agreements and Orders, Peaches (Colorado), Pears (Oregon-Washington), Almonds (California), Filberts/Hazelnuts (Oregon-Washington), Dried Prunes (California).

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

Therefore, new §§ 919.224, 931.220, 981.335, 982.330 and 993.336 are added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations).

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.224 Expenses and assessment rate.

Expenses of $1,000 by the Administrative Committee are authorized, and an assessment rate of $0.01 per bushel of peaches is established for the fiscal year ending June 30, 1986.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

§ 931.220 Expenses and assessment rate.

Expenses of $49,780 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized and assessment rate of $0.02 per Western Standard pear box of pears is established for the fiscal year ending June 30, 1986. Unexpended funds may be carried over as a reserve.

PART 981—ALMONDS GROWN IN CALIFORNIA

§ 981.335 Expenses and assessment rate.

Expenses of $13,465,918 by the Almond Board of California are authorized for the crop year ending June 30, 1986. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.7 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41 but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.330 Expenses, assessment rate, and operating reserve.

Expenses of $73,999 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at 0.2 cent per pound of assessable filberts for the 1985–86 marketing year ending June 30, 1986. Unexpended funds are carried over as a reserve, or made available to handlers.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

§ 993.336 Expenses and assessment rate.

Expenses of $245,526 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $2.26 per ton for salable dried prunes for the 1985–86 crop year ending July 31, 1986.

Dated: September 9, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–21969 Filed 9–12–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 85-16]

Description of Office, Procedures, Public Information; Staff No-Objection Position

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is amending its rules concerning Office procedures and public information to add staff no-objection positions to the list of publicly available documents in 12 CFR 4.15.

EFFECTIVE DATE: October 15, 1985.

ADDRESS: Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: Ford Barrett, Assistant Director, Legislative and Regulatory Analysis Division, Telephone (202) 447-1177.

SUPPLEMENTARY INFORMATION: The Office has adopted guidelines for providing informal legal advice on the application of banking law provisions administered by the Office to certain contemplated activities and transactions. The guidelines are designed to permit any party, but especially bank attorneys, to request informal advisory positions from the Office staff on transactions and activities for which approval is not required by law. The typical request will ask whether the staff will object if the contemplated activity or transaction is carried out in the described manner. Staff responses to these requests are referred to as staff no-objection positions.

This final rule provides for public access to letters requesting a staff no-objection position and to the resulting staff no-objection position.

Under § 4.15(c), the Office may delete identifying details from no-objection requests or staff no-objection positions to the extent necessary to prevent an invasion of personal privacy. Unless redacted by the Office, the names of persons and banks identified in written requests for staff no-objection positions or staff no-objection positions become public.

Reason for Not Allowing Notice and Comment Procedures

Since this final rule merely adds another category of information to the list of material available to the public, solicitation of public comment is not necessary.

Regulatory Flexibilty Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

The Office has determined that this final rule does not constitute a "major rule" and, therefore, does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 4

National banks, Staff no-objection position.

Authority and issuance

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

For the reasons set out in the preamble, Part 4 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

1. The authority cite for Part 4 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. In § 4.15, a new paragraph (a)(10) is added to read as follows:

§ 4.15 Orders, opinions, etc., available to the public.

(a) * * *

(10) Requests for staff no-objection positions and staff responses.

* * * * *

Dated: July 23, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-21826 Filed 9-12-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-12]

Alteration of Control Zone, Roosevelt Roads, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects FR Doc. 85-18330 published in the **Federal Register** on August 2, 1985 (50 FR 31344), which altered the Roosevelt Roads, Puerto Rico, control zone.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-18330 published on August 2, 1985, altered the Roosevelt Roads, Puerto Rico, control zone. Subsequent to publication of the Final Rule, flight inspection information was received which disclosed that the bearing from the Roosevelt Roads ultra high frequency radio beacon (UHF/RBN) specified in the rule was incorrect. The correct bearing upon which the control zone arrival extension is predicated is 037°. The correction to the Final Rule will incorporate this newly received flight inspection data. To avoid confusion the complete control zone description, as corrected, is presented in the text of this document. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A, dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Roosevelt Roads, Puerto Rico, control zone to accommodate Instrument Flight Rule operations at Naval Station Roosevelt Roads.

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. I find that good cause exists to make this amendment effective on the original effective date of September 26, 1985.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

Roosevelt Roads, PR—[Revised]

Within a 5-mile radius of NS Roosevelt Roads (lat. 18°15'05" N., long. 65°38'35" W.); within 3 miles each side of the 037° bearing from Roosevelt Roads UHF/RBN, extending from the 5-mile radius zone to 6.5 miles northeast of the RBN.

Issued in East Point, Georgia, on September 26, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85-21879 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-AWP-21]

Proposed Redefinition of the Phoenix Sky Harbor Airport, Phoenix, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The definition to the existing Phoenix Sky Harbor Airport, Phoenix, Arizona, Control Zone is being changed to reflect geographical coordinates in lieu of the Phoenix Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) to describe the airspace. This action does not change the actual airspace, only editorial changes to the description of the existing Phoenix, Arizona, Control Zone.

DATES: Effective date—0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration; 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6649.

SUPPLEMENTARY INFORMATION:

History

These actions are in the form of a final rule, which involves the redefinition of the Phoenix, Arizona, Control Zone resulting from the renaming of the Phoenix VORTAC to the Salt River VORTAC. As a result of this name change, an editorial change to the description of the control zone becomes necessary. To preclude numerous editorial changes to control zones, it has been determined that the use of geographical coordinates as reference points describing control zones are more permanent and are not as subject to change as names or locations of VORTAC facilities.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the description of the Phoenix, Arizona, Control Zone by using geographical coordinates and delete the Phoenix VORTAC reference used in the definition. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA considers that there is an immediate need for a regulation to reflect the correct description of the Phoenix, Arizona, Control Zone. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the charting date of November 21, 1985. Description of the amended control zone is set forth below and depicted on the chart at the end of this document.

The FAA has determined that this 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 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 will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Phoenix, AZ—[Revised]

"Beginning at lat. 33°27'30" N., long. 112°05'45" W.; thence clockwise via the 5-mile radius of the Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.); to lat. 33°27'30" N., long. 111°56'00" W.; to lat. 33°27'30" N., long. 111°51'25" W.; to lat. 33°24'20" N., long. 111°51'25" W.; to lat. 33°24'20" N., long. 111°56'25" W.; thence clockwise via the 5-mile radius of Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.); to lat. 33°24'20" N., long. 112°05'30" W.; to lat. 33°24'20" N., long. 112°07'00" W.; to lat. 33°27'30" N., long. 112°07'00" W.; to the point of beginning."

Issued in Los Angeles, California on August 28, 1985.

H. C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-21880 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Temporary Stay of Effective Date as Rule Applies in the State of Wisconsin

AGENCY: Federal Trade Commission.

ACTION: Extension of temporary stay of effective date as Rule applies within Wisconsin.

SUMMARY: The Federal Trade Commission has received a petition from the Wisconsin Department of Transportation requesting a statewide exemption from the Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or the "Used Car Rule"), 16 CFR Part 455. The Commission is extending the stay of the effective date of the Used Car Rule in Wisconsin for 90 days, while the Petition is being considered.

DATE: The 90 day extension of the stay of the Used Car Rule within Wisconsin is effective September 6, 1985, and expires on December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave (202/376-2805), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On May 8, 1985, the Commission decided to stay the effective date of the Used Car Rule as it applied within the State of

Wisconsin for a temporary period of 120 days, from May 9, 1985, to September 6, 1985. 50 FR 20094 (1985). On May 23, 1985, the Commission published a notice in the **Federal Register** soliciting public comment on the Wisconsin Petition. 50 FR 21269 (1985). The period for public comments expired on June 24, 1985. *Id.* For good cause, the Commission has now decided to extend the stay of the effective date of the Used Car Rule as it applies within the State of Wisconsin for a period of 90 days, from September 6, 1985, to December 5, 1985.

The Commission has decided that an extension of the stay of the effective date of the Used Car Rule should be granted pending the Commission's further consideration of the Petition. Wisconsin has had its regulation in effect for several years and dealers are already using the disclosure forms required by the regulation that is the basis for the Petition. Wisconsin dealers are thus providing some information to consumers. Therefore, a brief extension of the stay of the effective date of the Used Car Rule, as it applies within the State of Wisconsin, is unlikely to cause significant consumer injury if the Petition is denied, and may avoid unnecessary expense to Wisconsin dealers if an exemption is granted.

In addition, the Commission has, for good cause, determined that public notice and comment on this 90 day extension of the stay of the effective date is unnecessary. Public comment would appear to be unnecessary because the stay is merely designed to maintain the status quo and to avoid placing a potentially unnecessary burden on dealers in the State of Wisconsin during the limited period of time during which the Petition is being considered. Thus, in accordance with §§ 1.26(b) and 1.26(e) of the Commission's Rules of Practice, 16 CFR 1.26(b) and 1.26(e), and sections 553(b) and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(b) and 553(d), the Commission, for the reasons stated above, determined that there is good cause for deciding that prior public notice and comment is not necessary before granting an extension of the stay of the effective date of the Used Car Rule as it applies within the State of Wisconsin. For the same reasons, the extension of the temporary stay will become effective immediately on September 6, 1985.

Given the unique circumstances of this Petition, the Commission has determined that a extension of the temporary stay of the effective date is appropriate. Accordingly, the Commission temporarily extends the stay of the effective date of the Used Car Rule, as it applies within the State of Wisconsin, for an additional 90 days, from September 6, 1985, to December 5, 1985, pending final consideration of the Petition.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-21919 Filed 9-12-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-59]

Staff Accounting Bulletin No. 59

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding accounting for noncurrent marketable equity securities.

DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Leland E. Graul, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: September 5, 1985.

John Wheeler,

Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 59 to the table found in Subpart B.

Staff Accounting Bulletin No. 59

The staff hereby adds Section M to Topic 5 of the staff accounting bulletin series. Section M discusses the staff's views regarding accounting for noncurrent marketable equity securities.

Topic 5: Miscellaneous Accounting

* * * * *

M. Noncurrent Marketable Equity Securities

Facts: Paragraph 21 of Financial Accounting Standards Board ("FASB") Statement No. 12, "Accounting for Certain Marketable Securities," specifies that "a determination must be made as to whether a decline in market value below cost as of the balance sheet date of an individual security is other than temporary. [footnote reference deleted] If the decline is judged to be other than temporary, the cost basis of the individual security shall be written down to a new cost basis and the amount of the write-down shall be accounted for as a realized loss." Statement No. 12 does not define the phrase "other than temporary." In applying this guidance to its own situation, Company A has interpreted "other than temporary" to mean permanent impairment. Therefore, because Company A's management has not been able to determine that its investment in Company B is permanently impaired, no realized loss has been recognized even though the market price of B's shares is currently less than one-third of A's average acquisition price.

Question 1: Does the staff believe that the phrase "other than temporary" should be interpreted to mean "permanent?"

Interpretive Response: No. The staff believes that the FASB consciously chose the phrase "other than temporary" because it did not intend that the test be "permanent impairment," as has been used elsewhere in accounting practice.[1]

The value of investments in marketable securities classified as noncurrent assets may decline for various reasons. The market price may be affected by general market conditions which reflect prospects for the economy as a whole or by specific information pertaining to an industry or an individual company. Such declines require further investigation by management. Acting upon the premise that a write-down may be required,

[1] Footnote 8 to Statement No. 12 refers to an Auditing Interpretation published by the staff of the Auditing Standards Division, AICPA, "Evidential Matter for the Carrying Amount of Marketable Securities," in *The Journal of Accountancy*, April 1975, for a discussion of considerations applicable to a determination as to whether a decline in market value below cost, at a particular point in time, is other than temporary.

management should consider all available evidence to evaluate the realizable value of its investment.

There are numerous factors to be considered in such an evaluation and their relative significance will vary from case to case. The staff believes that the following are only a few examples of the factors which, individually or in combination, indicate that a decline is other than temporary and that a write-down of the carrying value is required:

a. The length of the time and the extent to which the market value has been less than cost;

b. The financial condition and near-term prospects of the issuer, including any specific events which may influence the operations of the issuer such as changes in technology that may impair the earnings potential of the investment or the discontinuance of a segment of the business that may affect the future earnings potential; or

c. The intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value.

Unless evidence exists to support a realizable value equal to or greater than the carrying value of the investment, a write-down accounted for as a realized loss should be recorded. In accordance with the guidance of paragraph 11 of Statement No. 12, such loss should be recognized in the determination of net income of the period in which it occurs. The written down value of the investment in the company becomes the new cost basis of the investment.

Question 2: When management determines that a write-down, accounted for as a realized loss, is necessary, how should the amount of the write-down be determined?

Interpretive Response: The carrying value of the investment should be written down to reflect realizable value. The particular facts and circumstances dictate the amount of realized loss to be recognized on a case by case basis.

* * * * *

[FR Doc. 85-21918 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

Correction

In FR Doc. 85-18558 beginning on page 31708 in the issue of Tuesday, August 6, 1985, make the following correction:

On page 31708, third column, under **"FOR FURTHER INFORMATION CONTACT"**, second line, "(HFV-35)" should read "(HFV-135)".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Iron Hydrogenated Dextran Injection.

Correction

In FR Doc. 85-18559 appearing on page 31709 in the issue of Tuesday, August 6, 1985, make the following correction:

In the third column, fourth line, insert the word "Injectable." after "Animal drugs,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f and 602

[T.D. 8052]

Reporting of State and Local Income Tax Refunds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of State and local income tax refunds. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The regulations affect all persons who, with respect to individuals, make payments of refunds of State and local income taxes, or allow credits or offsets with respect to such taxes, and provide them with the guidance to comply with the law.

DATES: The regulations are effective for refunds made, and credits and offsets allowed, after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1983, the **Federal Register** published temporary regulations (48 FR 41385) and proposed amendments (48 FR 41436) to the Income Tax Regulations (26 CFR Part 1) under section 6050E of the Internal Revenue Code of 1954. These amendments were proposed to provide rules relating to the information reporting of State and local income tax refunds, credits, and offsets under section 6050E of the Code. Section 6050E was added to the Code by section 313 of the Tax Equity and Fiscal Responsibility Act of 1982. (96 Stat. 603). Section 6050E subsequently was amended by section 151 of the Tax Reform Act of 1984 (98 Stat. 690).

Five written comments were received with respect to the proposed amendments to the regulations. A public hearing was not held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The Treasury decision also reflects the changes made to section 6050E by the Tax Reform Act of 1984.

Tax Reform Act of 1984

Section 6050E as originally enacted did not provide any exception to the reporting requirement or the requirement to furnish statements to taxpayers with respect to a refund, credit or offset made or allowed to a taxpayer who did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The temporary and proposed regulations, however, provide that a refund officer need not make an information return or send a statement to the applicable taxpayer if the refund officer can verify that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset.

The Tax Reform Act of 1984 amended section 6050E to provide an exception only to the requirement to furnish statements to taxpayers if it can be determined, in the manner provided by regulations, that the applicable taxpayer did not claim itemized deductions for Federal Income tax purposes for the taxable year giving rise to the refund, credit, or offset. The amendment is effective for refunds, credits, and offsets made or allowed after December 31, 1982. Congress intended that a refund officer be required to make an information return with respect to itemizers and non-itemizers who receive a refund, credit, or offset of State or local income taxes. Therefore, the Treasury decision provides that a refund officer need not send a statement to a taxpayer with respect to a refund, credit, or offset of personal income taxes if the refund officer can verify, in the manner

provided by the regulations, that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The refund officer, however, must make an information return with the Internal Revenue Service with respect to those refunds, credits, and offsets.

Public Comments

The temporary and proposed regulations provide that a refund officer can verify that a taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit or offset only from the three sources listed in the regulations. The first listed source of verification is a copy of Schedule A of the individual's Federal income tax return if the copy is required to be attached to the State or local income tax return. The second listed source is the State or local income tax return if transcription of information from schedule A of the Federal return on the State or local income tax return is required for the purpose of computing liability for the State or local income tax. The third listed source is information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

One comment suggested that the list of sources for verification of non-itemization be expanded to include information transcribed on the State or local income tax return from the Federal return (other than schedule A), where the information can be used by the refund officer to determine independently whether the taxpayer itemized deductions for Federal income tax purposes. The Service believes, however, that for verification purposes the transcription of such information on the State or local income tax return must be required by the State or local taxing authority for the purpose of computing the taxpayer's liability for the State or local income tax. The Service believes that this additional requirement is necessary in order to ensure that the transcribed information will be subject to the same checks for accuracy as other information on the State or local income tax return. Consequently, the Treasury decision provides that, in addition to the sources of verification set forth in the temporary and proposed regulations, information transcribed from the Federal return (other than Schedule A) on the State or local income tax return may be used to verify non-itemization if two conditions are met. First, the transcription of the information must be required for the purpose of computing liability for the State or local income tax. Second, the information must be such that the refund officer can determine conclusively from that information whether the taxpayer itemized deductions for Federal income tax purposes.

The Treasury decision also clarifies that the State or local income tax return is the source of verification in cases where a copy of Schedule A of the Federal return is required to be attached to the State or local income tax return, or where transcription of information from Schedule A of the Federal return is required for the purpose of computing liability for the State or local income tax. In this connection, the Treasury decision provides that the omission of a copy of the Schedule A, or of information required to be transcribed from the Schedule A, must be consistent with the taxpayer's computation of tax on the State or local income tax return. In addition, the information contained on the Schedule A must be required for the purpose of computing liability for the State or local income tax.

The remaining comments suggested revisions to the regulations that either would have conflicted with the express statutory language of section 6050E, or would have placed an unreasonable burden on refund officers by requiring them to determine whether taxpayers who itemized deductions for Federal tax purposes received a tax benefit from the payment to which the State or local income tax refund, credit or offset is attributable. These suggestions were not adopted.

In particular, several comments suggested that the regulations be revised to allow a refund officer to furnish the required statement to the applicable taxpayers at any time before the end of January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. Section 6050E(b), however, provides that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. This requirement was not changed by the Tax Reform Act of 1984. Therefore, in accordance with section 6050E(b), the Treasury decision retains the rule contained in the temporary and proposed regulations that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 533 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 5f

Income taxes, Filing requirements, Tax Equity and Fiscal Responsibility Act of 1982.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 5f, and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * *

Section 1.6050E–1 also issued under 26 U.S.C. 6050E.

Par. 2. Section 1.6050E–1 is added to Part 1 at the appropriate place:

§ 1.6050E-1 Reporting of State and local income tax refunds.

(a) *Applicability.* Section 6050E and this section apply to any refund officer who, with respect to an individual, makes payments of refunds of State or local income taxes or allows credits or offsets with respect to such taxes aggregating $10 or more for such individual in any calendar year.

(b) *Definitions.* For purposes of this section,—

(1) The term "refund officer" means the officer or employee of a State or local taxing jurisdiction having control of payments of refunds or the allowance of credits or offsets, or the person appropriately designated for purposes of this section.

(2) The term "State" shall include the District of Columbia but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(3) The terms "individual" shall not include an estate or trust.

(4) The term "credit or offset" means an overpayment of tax which, in lieu of being refunded to the taxpayer, is:

(i) Applied against an existing liability of the taxpayer,

(ii) Available for application against a future liability of the taxpayer, or

(iii) Otherwise used or available for use for the taxpayer's benefit.

(c) *Requirement of reporting.* Every refund officer described in paragraph (a) of this section shall make an information return in accordance with this section for each calendar year. An information return must be made even if the refund officer is not required to furnish a statement to the applicable taxpayer under paragraph (k)(2) of this section.

(d) *Prescribed Form.* Except as otherwise provided in paragraph (i) of this section, the information return required by paragraph (c) of this section shall be made on Forms 1096 and 1099.

(e) *Refunds involving different taxable years.* In the case of refunds paid or credits or offsets allowed during a calendar year with respect to two or more taxable years of an individual, a separate Form 1099 shall be filed with respect to each taxable year of the individual. Thus, if during calendar year 1983 a refund officer pays to an individual a refund of $15 with respect to that individual's taxable year ending in 1982 and $20 with respect to that individual's taxable year ending in 1981, a separate Form 1099 shall be filed for each of the two payments. If, instead, the refund with respect to the individual's taxable year ending in 1982 were $5 instead of $15, no return would be required for the payment of $5.

(f) *Information required.* The information required to be reported on Forms 1096 and 1099 includes the aggregate amount of refunds, credits, and offsets made or allowed during the calendar year with respect to the taxable year of the individual covered by the return; the name, address and taxpayer identification number of the individual with respect to whom such payment, credit, or offset was made or allowed; the taxable year covered by the return; and such other information as may be required by the forms. In addition, the nature of the tax is required to be indicated on the Form 1099 in any case where the refund, credit or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application.

(g) *When credit or offset deemed allowed.* For purposes of a return of information under this section, a credit or offset is deemed to be allowed when the liability to pay or credit such amount is admitted by the State or local taxing jurisdiction. Thus, if an amount with respect to a taxpayer's 1982 taxable year is credited in 1983 to reduce the liability of the taxpayer to make estimated tax payments in 1983, it is reportable as a credit allowed in 1983. It is not reportable in the taxable year that gives rise to the refund, credit or offset.

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 of the following year. Returns shall be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for Forms 1099. For extensions of time for filing returns under this section, see § 1.6081-1.

(i) *Use of magnetic media and substitute forms*—(1) *Magnetic media.* A refund officer may be required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms. See section 6011(e) and applicable regulations and revenue procedures thereunder. If a refund officer is not required to file the Forms 1099 required by this section on magnetic media, the refund officer may request permission under applicable regulations and revenue procedures to submit the information required by this section on magnetic media.

(2) *Substitute forms.* A refund officer may prepare and use a form which contains provisions identical with those of Form 1096 if the refund officer complies with all revenue procedures relating to substitute Form 1096 in effect at that time. In addition, if a refund officer is not required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms, the refund officer may prepare and use a form which contains provisions identical with those of Form 1099 if the refund officer complies with all revenue procedures relating to substitute Form 1099 in effect at that time.

(j) *Voluntary information exchange agreements.* The requirements of reporting information to the Internal Revenue Service under this section may be satisfied for any calendar year by submission of the information required under paragraph (f) of this section in accordance with the terms of a voluntary information exchange agreement between the State and the United States in effect during such year.

(k) *Requirement of furnishing statements to recipients*—(1) *In general.* Except as provided in paragraph (k)(2) of this section, every refund officer required to make a return of information under this section shall furnish to the individual whose identifying number is required to be shown on the return a written statement showing the aggregate amount shown on the information return of refunds, credits and offsets made or allowed to such individual with respect to each taxable year of the individual, the name of the State or local taxing jurisdiction paying such refund or allowing such credits or offsets, the taxable year giving rise to the refund, credit or offset and a legend stating that such amount is being reported to the Internal Revenue Service. The requirement of this paragraph may be met by furnishing to the individual a copy of the Form 1099 filed with respect to that individual provided that the form bears a legend stating that such amount is being reported to the Internal Revenue Service. For purposes of this paragraph, a statement shall be considered to be furnished to an individual if it is mailed to the individual at the individual's last known address.

(2) *Exception for nonitemizers.* A refund officer need not furnish a statement to an individual under paragraph (k)(1) of this section if the refund officer verifies that the individual did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. This exception shall not apply, however, if the refund, credit, or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from

a trade or business and is not a tax of general application. For purposes of this paragraph (k)(2), verification shall be made solely from—

(i) The State or local income tax return, or

(ii) Information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

(3) *Verification from the State or local income tax return.* A refund officer shall verify from the State or local income tax return that an individual did not claim itemized deductions for Federal income tax purposes for the applicable taxable year only if—

(i)(A) An individual who itemized deductions for Federal income tax purposes either must attach a copy of Schedule A of the individual's Federal income tax return to the State or local income tax return or must transcribe information from Schedule A of the individual's Federal income tax return on the State or local income tax return;

(B) The information contained on or transcribed from the Schedule A is required for the purpose of computing liability for the State or local income tax; and

(C) The omission of a copy of the Schedule A, or of the information required to be transcribed from the Schedule A, is consistent with the taxpayer's computation of tax on the State or local income tax return; or

(ii) Individuals are required to transcribe information from their Federal income tax return (other than from Schedule A) on the State or local income tax return for the purpose of computing liability for the State or local income tax and the information can be used to determine conclusively whether the taxpayer itemized deductions for Federal income tax purposes.

(4) *Example.* The provisions of paragraph (k)(3)(ii) of this section may be illustrated by the following example:

Example. State X asks for transcription of the following information on its 1983 income tax return from the taxpayer's 1983 Federal income tax return: Adjusted gross income; taxable income; and number of exemptions claimed. The amount of adjusted gross income and the number of exemptions claimed on the Federal income tax return are taken into account in computing the liability for income tax under the laws of State X. The amount of taxable income transcribed from the Federal return, however, does not enter into the computation of liability for income tax under the laws of State X. Thus, this amount may not be taken into account by the refund officer of State X for purposes of verifying whether a taxpayer itemized deductions for Federal income tax purposes. Since the refund officer of State X will not be able to determine conclusively from the amount of adjusted gross income and the number of exemptions transcribed from the Federal return whether a taxpayer itemized deductions for Federal income tax purposes, the transcribed information does not meet the requirements of paragraph (k)(3)(ii) of this section.

(l) *Time for furnishing statements*—(1) *General rule.* The statement required under paragraph (k) of this section shall be furnished after December 31 of the year in which the refund is paid or credit or offset is allowed, and on or before January 31 of the following year.

(2) *Extensions of time.* For good cause shown upon written application of the refund officer, the service center director may grant an extension of time not exceeding 30 days in which to furnish statements under this paragraph. The application shall be addressed to the Service Center with which the Forms 1099 required under this section are required to be filed and shall contain a concise statement of the reasons for requesting the extension to aid the service center director in determining the period of the extension, if any, which will be granted. The application shall state at the top of the first page that it is made under this section and shall be signed by the refund officer. In general, the application shall be filed after September 30 of the year in which the refund is paid or credit or offset is allowed, and before January 15 of the following year.

(m) *Effective date.* This section applies to payments of refunds and credits and offsets allowed after December 31, 1982.

Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982

PART 5f—[AMENDED]

Par. 3. The authority for Part 5f is revised to read as set forth below and the authority citations following all sections in Part 5f are removed:

Authority: 26 U.S.C. 7805. Sections 5f.103–1 and 5f.163–1 also issued under 26 U.S.C. 103(j), 26 U.S.C. 163(f), and 96 stat. 595. Section 5f.6045–1 also issued under 26 U.S.C. 6045.

§ 5f.605E–1 [Removed]

Par. 4. Part 5f of 26 CFR is amended by removing § 5f.6050E–1.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050E–1 . . . 1545–0120".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–21983 Filed 9–12–85; 8:45 am]

BILLING CODE 4830–10–M

26 CFR Parts 145 and 602

[T.D. 8050]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982). These regulations affect manufacturers, producers, importers, dealers, and retailers of these vehicles and will provide them with the guidance needed to comply with the law.

DATES: These regulations are effective for heavy trucks, truck trailers and semitrailers, and tractors sold on or after April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John Broadbent of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3287, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1954 (Code) relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. These amendments conform the regulations to section 512 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424). The temporary regulations provided by this document will remain in effect until

superseded by final regulations on this subject.

Temporary regulation § 145.4052–1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, was published in the Federal Register on April 4, 1983 (T.D. 7882) (48 FR 14361). These regulations generally provided that the sale of a heavy vehicle to a purchaser who intends to lease the vehicle long term is not a first retail sale.

Summary of Changes in Temporary Regulation

This document amends § 45.4052–1 (a), (b), and (f) by revising the rules relating to the definition of the first retail sale of a vehicle. Under the new rules, the distinction between long-term and short-term leasing has been eliminated.

If a lease is entered into by the manufacturer, producer, or importer of the vehicle, both the prior rules and the revised rules provide that the first retail sale occurs when the vehicle is leased. Under the revised rules, if a vehicle is sold by the manufacturer, producer, or importer, the sale is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the vehicle, or (b) the seller and the purchaser register under section 4222, and the purchaser certifies that it intends to resell the vehicle. If a vehicle is sold tax-free but is later leased by the purchaser, the leasing of the vehicle will be deemed to be the first retail sale.

No change has been made to the existing temporary regulations with respect to the event triggering liability for the tax. Under all circumstances, the entire tax is due at the time the first retail sale occurs.

These revised temporary rules apply to sales made on or after April 1, 1983, the effective date of section 4051, with specified transitional rules. In no case, under these transitional rules, will tax be imposed on a vehicle under both the existing temporary regulations and the revised temporary regulations.

In determining the tax base of a vehicle, the retail value of the tires on the vehicle is excluded under section 4052(b)(1)(B)(iii). Under both the existing and the revised regulations, this value is the lowest established price at which the retailer would sell the tires. The existing temporary regulations provide as a safe-harbor rule that if a vehicle retailer has no lowest established price for tires, a price is not unreasonable if it is no more than 50 percent of the tire manufacturer's suggested retail price. This rule permits the tax base to be affected by a price that has no bearing on the actual sales price of the tires and is subject to considerable variation among tire manufacturers. Accordingly, this safe-harbor rule is deleted in these revised temporary regulations, effective prospectively.

Need for Temporary Regulations

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is John Broadbent of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

26 CFR Part 145 and Part 602 are amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

Paragraph 1. The authority citation for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052–1 also issued under 26 U.S.C. 4052(d).

Par. 2. Section 145.4052–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The last sentence of paragraph (d)(2)(iii) is amended by adding at the beginning thereof, "For vehicles sold on or after April 1, 1983, and before [the date 30 days after publication of this document in the **Federal Register**],".

(d) Paragraph (f) is revised to read as set forth below.

§ 145.4052–1 Special rules and definitions.

(a) *First retail sale*—(1) *In general.* For purposes of § 145.4051–1, the term "first retail sale" means the first sale of an article after manufacture, production or importation. The sale of an article to a purchaser who is not engaged in the business of leasing and who intends to resell the article, is not a first retail sale. In addition, the sale of an article to a purchaser who is engaged in the business of leasing to any extent will not be considered a first retail sale if the purchaser and the seller are registered under § 48.4222(a)–1, and the seller in good faith accepts a proper certification, as provided in paragraph (a)(3) of this section, from the purchaser that the purchaser intends to resell the article. The first sale of an article following a tax-free sale of the article shall be considered the first retail sale of the article, unless the subsequent sale qualifies as a tax-free sale under either of the two preceding sentences or under section 4221. An intent to lease an article is not considered an intent to resell the article for purposes of this section. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as first retail sales if the purchaser is not engaged in the business of reselling such articles and acquires them for the purpose of using them rather than reselling them.

(2) *No installment payments of tax.* If the first retail sale is a lease, an installment sale, or another form of sale under which the sales price is paid in installments, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax

is deferred by reason of the fact that the sales price is paid in installments.

(3) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a tax-free sale to the purchaser. The certificates and proper records of invoices, orders, etc., relating to tax-free sales must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificates shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am (Title) of (Name of purchaser), that I am authorized to execute this certificate, and that the vehicles specified in the accompanying order, or on the reverse side hereof, (or all orders placed by the purchaser for the two year period commencing ————) are purchased for resale and not for the purpose of leasing. I have filed Form 637 and have received registration number ——

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature) ————————————

(Address) ————————————

(4) *Registration.* Section 4222 and the regulations thereunder shall apply to tax-free sales made under this section.

(b) *Lease treated as first retail sale*—(1) *In general.* For purposes of this section and § 145.4051-1, the leasing of an article before the first retail sale (within the meaning of paragraph (a) of this section) of the article shall be considered the first retail sale of the article. This rule applies without regard to the term of the lease. Thus, if a manufacturer leases an article prior to sale, or if a purchaser purchases an article tax free under paragraph (a) (1) of this section or section 4221 and then leases it, the leasing of the article will be deemed to be the first retail sale.

(2) *Computation of tax.* When a lease is treated as the first retail sale under paragraph (b) (1) of this section, the tax shall be computed on a constructive sales price established by the Commissioner as if such article were sold at retail on the date the lease is made.

* * * * *

(f) *Effective date*—(1) *In general.* The provisions of this section shall be effective for articles sold or leased on or after April 1, 1983. However, if a sale to a lessor before November 12, 1985, would have been tax free under § 145.4052-1 of the temporary regulations contained in 26 CFR part 145 revised as of April 1, 1984, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the vehicle under the prior regulations will be treated as the first retail sale for purposes of this section. For example, if a vehicle was sold to a purchaser who intended to lease it long term, the sale would have been tax free under the prior regulations. If such a sale was treated as tax free by the parties, and the purchaser later sells the vehicle or leases it long term, the sale or lease will be treated as the first retail sale of the vehicle.

(2) *Vehicle subject to tax only once.* In no case will tax be imposed on the first retail sale of a vehicle under both the prior regulations and this section. If, under the prior regulations, tax was properly paid on the first retail sale of a vehicle, and if the amount of the tax determined under the prior regulations is greater than the amount of tax that would be imposed upon the first retail sale of the vehicle as determined under this section, then the taxpayer shall be entitled to a refund of the difference. For example, if under the prior regulations a lessor treated a long-term lease of a vehicle as a first retail sale, and paid tax upon making the lease, the taxpayer may claim a refund of any excess of the tax paid under the prior regulations (based on a constructive sales price) over the tax that would be imposed under this section (based on the sales price charged the lessor by the manufacturer or other seller). No additional tax would be payable under this section by a manufacturer that treated the sale of the vehicle to a lessor as a tax-free sale under the prior regulations.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 145.4052-1 ..... 1545-0745"

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: August 30, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85-21984 Filed 9-12-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 85-21325, beginning on page 36420 in the issue of Friday, September 6, 1985, make the following correction: On page 36421, in the middle column, between the seventh and eighth lines insert ", where feasible, as part of the prisoner's parole release plan,".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Coke Oven Emissions Standard; Conforming Deletions

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Deletion of portions of standard to conform with court decision.

SUMMARY: OSHA is deleting certain terms from the permanent standard governing employee exposure to coke oven emissions [29 CFR 1910.1029] to conform the standard to the decision of the United States Court of Appeals for the Third Circuit in the case of *American Iron and Steel Institute et al. v. Occupational Safety and Health Administration*, 577 F.2d 825 (3d Cir. 1978), *cert. dismissed*, 448 U.S. 917, 101 S. Ct. 38, 65 L. Ed. 2d 1180 (1980). The deletions implement the Court's interpretation of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) that the Secretary of Labor lacks statutory authority to place an affirmative duty on each employer to research and develop new technology to reduce exposures to coke oven emissions. The deletions also respond to

the Court's vacating the requirement for quantitative fit testing of certain respirators based on the lack of record support for the requirement in the coke oven emissions proceeding.

EFFECTIVE DATE: The deletions are effective on September 13, 1985.

SUPPLEMENTARY INFORMATION: On October 22, 1976, the Occupational Safety and Health Administration published a final standard governing Exposure to Coke Oven Emissions (41 FR 46742), pursuant to section 6(b) of the Occupational Safety and Health Act of 1970. Within the 60-day period provided by section 6(f) of the Act, petitions for review were filed in the United States Court of Appeals for the Third Circuit challenging the validity of the standard. On March 28, 1978, that Court issued its decision in the case of *American Iron and Steel Institute et al.* v. *Occupational Safety and Health Administration.*

In its decision, the Third Circuit denied the petitions for review and affirmed the Secretary's standard except: (1) insofar as the Secretary required the petitioners to research and develop (as defined in the Court's opinion) any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit, 29 CFR 1910.1029(f)(1)(i)(*b*), (f)(1)(ii)(*b*), (f)(1)(iii)(*b*), and (f)(6)(iii); (2) the provision relating to the requirement of a quantitative fit test for respirators, 29 CFR 1910.1029 (g)(4)(i); and (3) application of the standard to non-coke-oven employers. As to the first two mentioned requirements, the applicable provisions of the coke oven emissions standard were vacated and, as to the last requirement, the cause was remanded for further proceedings consistent with the Court's opinion.

In vacating the "research and develop" provisions, the Court reaffirmed the Secretary's authority to require an employer to implement technology "looming on today's horizon", noting that the Secretary is not limited to issuing a standard solely based upon technology that is fully developed today. Nevertheless, the Court concluded, the Occupational Safety and Health Act does not permit the Secretary to place an affirmative duty on each employer to research and develop new technology.

In vacating the provision concerning quantitative fit testing of certain respirators, the Court acted in light of the Secretary's concession during the litigation that the provision was unsupported by the record before the court and would not be enforced.

OSHA subsequently issued revised inspection and compliance procedures for the Coke Oven Emissions standard which reflected the Court's action (OSHA Instruction CPL 2-2.28, September 16, 1980). These were most recently updated in 1982 (OSHA Instruction CPL 2-2.28A, August 2, 1982). However, the regulatory text in the Code of Federal Regulations remained unchanged and in need of clarification. Therefore, in order to conform the Coke Oven Emissions standard to the Court's decision and to eliminate possible confusion, it is necessary to delete certain language from the cited provisions of the standard as follows:

A. The words "research, develop and" are deleted from paragraphs (f)(1)(i)(*b*), (f)(1)(ii)(*b*) and (f)(1)(iii)(*b*).

B. the words "development and" are deleted from paragraph (f)(6)(iii).

C. The sentence "The employer shall perform quantitative fit tests annually for each employee who uses a nonpowered, particulate filter respirator" is deleted from paragraph (g)(4)(i).

I find that since this action merely removes regulatory language already vacated by the Court, good cause exists for making the change without the notice and public comment procedure which is otherwise required, 5 U.S.C. 553. The same reasons constitute good cause for making this change effective immediately. Accordingly, this amendment is effective September 13, 1985.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

This action is taken pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR 1911.5.

List of Subjects in 29 CFR Part 1910

Hazardous substances, Gases, Occupational safety and health.

Signed at Washington, D.C., this 4th day of September, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

Subpart Z, Part 1910 of Title 29, Code of Federal Regulations, is amended as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is revised to read as set forth below, and the authority citations following all sections in Subpart Z of Part 1910 are removed.

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z-1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. In § 1910.1029, paragraphs (f)(1)(i)(*b*), (f)(1)(ii)(*b*) and (f)(1)(iii)(*b*) are amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(*b*) The engineering and work practice controls required under paragraphs (f)(2), (f)(3) and (f)(4) of this section are minimum requirements generally applicable to all existing coke oven batteries. If, after implementing all controls required by paragraphs (f)(2), (f)(3) and (f)(4) of this section, or after January 20, 1980, whichever is sooner, employee exposures still exceed the permissible exposure limit, employers shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(ii) * * *

(*b*) If, after implementing all the engineering and work practice controls required by paragraph (f)(1)(ii)(*a*) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) * * *

(*b*) If, after implementing all engineering and work practice controls required by paragraph (f)(1)(iii)(*a*) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposures to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

* * * * *

3. In § 1910.1029, paragraph (f)(6)(iii) is amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(f) * * *

(6) * * *

(iii) If, after implementing all controls required by paragraph (f)(2)–(f)(4) of this section, or after January 20, 1980, whichever is sooner, or after completion of a new or rehabilitated battery the permissible exposure limit is still exceeded, the employer shall develop a detailed written program and schedule for the implementation of any additional engineering controls and work practices necessary to reduce exposure to or below the permissible exposure limit.

* * * * *

4. In § 1910.1029, paragraph (g)(4)(i) is amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(g) * * *

(4) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

* * * * *

[FR Doc. 85-21517 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning October 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202–254–4856 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended*. The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. In the ensuing months, the PBGC has published new rates and factors for plans terminating during the months of August, 1984 through September, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, 50 FR 10498, 50 FR 14700, 50 FR 20205, and 50 FR 24914).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1985, which set reflects a decrease of ¼ percent in the interest rate to 9 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market

conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after October 1, 1985, and because no adjustment by ongoing plans is required by this amendent, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 58 of Appendix B is revised and Rate Set 59 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_i" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
58	7-1-85	10-1-85	9.25	1.0850	1.0725	1.0400	7	8
59	10-1-85		9.00	1.0825	1.0700	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–21791 Filed 9–12–85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–85–09]

Drawbridge Operation Regulation; Tensaw River, AL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is changing the regulation governing the operation of the swing span railroad bridge over the Tensaw River, mile 15.0, near Hurricane, Baldwin County, Alabama, by requiring that at least eight hours advance notice be given for an opening of the draw from 5 p.m. to 9 a.m. The bridge will open on signal outside these hours. The bridge presently is required to open on signal from 8 a.m. to midnight. The draw is not required to open from midnight to 8 a.m., except that, during periods of severe storms or hurricanes the draw is required to open on signal. This change is being made because of infrequent requests to open the draw during the advanced notice period. This action will relieve the bridge owner of the burden of having a person available at the bridge between 5 p.m. and 9 a.m., and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Perry F. Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 21 June 1985, the Coast Guard published a proposed rule (50 FR 25721) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 1 July 1985. In each notice interested persons were given until 5 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notices, offering no objections to the proposed rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing this bridge during the advance notice period, 5 p.m. to 9 a.m., is one vessel every seven days. These few vessels can reasonably give eight hours notice for a bridge opening between 5 p.m. and 9 a.m. by placing a collect call at any time to the railroad office in Mobile, (205) 432–0725. Scheduling their arrival at the bridge at the appointed time would involve little or no additional expense to the mariners. To provide for leeway in the appointed arrival time, the railroad will have a tender at the bridge at least one-half hour before the appointed time who will remain at least one-half hour after that time for a late arriving vessel. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, the Coast Guard is changing Part 117 of Title 33, Code of Federal Regulations 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; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.113 is revised to read as follows:

§ 117.113 Tensaw River.

The draw of the Seaboard System Railroad bridge, mile 15.0 at Hurricane, shall open on signal; except that, from 5 p.m. to 9 a.m., the draw shall open on signal if at least eight hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

Dated: September 3, 1985.

Clyde T. Lusk, Jr.,

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

[FR Doc. 85-21835 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 74

Audit Requirements for State and Local Governments

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary of Education issues final regulations to implement the Single Audit Act of 1984 (Pub. L. 98-502) and the Office of Management and Budget (OMB) Circular No. A-128. The Secretary also invites comments, which will be shared across all Federal agencies, on these final regulations.

DATES: *Effective Date:* These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comment Date: Comments must be received on or before November 12, 1985.

ADDRESS: Comments should be addressed to John Prignano, Grants and Contracts Service, Department of Education, 400 Maryland Avenue, SW., Room 5082, ROB-3, Washington, DC 20202, telephone number, (202) 755-1217.

FOR FURTHER INFORMATION CONTACT: Guido Piacesi, Office of Inspector General, National Single Audit Coordinator, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, telephone number, (202) 245-0271.

SUPPLEMENTARY INFORMATION: The Single Audit Act of 1984 (the Act) requires State and local governments to conduct or have conducted periodic audits of Federal assistance funds that they have expended. The total amount of Federal funds received in a fiscal year determines whether a single audit shall be conducted. The amount of funds expended in a single program determines how intensively that program is audited. Programs are larger than grants, e.g., several grants may be awarded under a single program. Generally each program is identified by a CFDA number in a publication entitled "*Catalog of Federal Domestic Assistance.*"

The Act directs OMB to prescribe policies, procedures, and guidelines to implement the Act. The Act also requires each Federal agency to amend its regulations as necessary to conform to the Act and the OMB requirements. Accordingly, the Secretary is adding a new Appendix G to Part 74 of the Education Department General Administrative Regulations in order to conform to the requirements of the Act and OMB Circular A-128. Several common understandings in relation to the Act and the regulations required by the Circular are described below.

Effect of the Regulations on Public Colleges and Universities.

Under 31 U.S.C. 7502(d)(1) and paragraph 4(c) of Appendix G, public colleges and universities may be excluded from the single audit at the option of the State or local government responsible for the audit. Excluded institutions shall be audited in accordance with statutory requirements and the provisions of 34 CFR Part 74.

Applicability

Under 31 U.S.C. 7502(a)(1)(B) and paragraph 2(b) of Appendix G, a government receiving Federal financial assistance of between $25.00 and $100,000 must have an audit performed in accordance with Appendix G, or in accordance with audit requirements in Federal statutes and regulations applicable to the particular program. Part 74, Subpart H contains the general regulatory requirements for audits under Education Department programs and is amended by this notice to incorporate the requirements of the Single Audit Act and OMB Circular A-128. Program statutes and regulations may specify other audit requirements. If the statutes and regulations applicable to a particular program do not contain requirements concerning financial or financial and compliance audits, the single audit requirement in Appendix G applies.

Exemption

The law provides (31 U.S.C. 7502(a)(1)(C)) an exemption from the Act, the Circular, and program statutes and regulations on audit requirements for State and local governments receiving less than $25,000 in Federal financial assistance in a given year.

Federal-SEA-LEA Relationships

As of the date of this publication, cognizance for school districts has been assigned to the Department of Education, except for those in Arkansas, Georgia, Maryland, Minnesota, Oregon, Utah, and the Commonwealth of Puerto Rico. School districts in those States and the Commonwealth of Puerto Rico have been assigned to the Department of Agriculture. The special relationship between State departments of education and local educational agencies will result in Federal agencies generally working through State departments of education in fulfilling their cognizant audit responsibilities for LEA's.

Audit Resolution

The cognizant agency has a responsibility to oversee the resolution of audit findings that affect more than one agency (paragraph 9b(7)). If the cognizant agency determines the finding cannot be resolved through its independent actions, acting on behalf of the affected Federal agencies, it should identify the findings and propose a coordinating arrangement with the affected agencies to jointly resolve the findings.

Identify Questioned Costs.

The audit report section of the Appendix (paragraph 11a (3) and c) requires the identification of questioned costs as a result of noncompliance, fraud, abuse, or illegal acts or irregularities. Identification of those costs shall be by Catolog of Federal Domestic Assistance number (CFDA #) and fiscal year together with a citation of the statutes or regulations transgressed and recommended corrective actions.

State Initiative

The Act requires testing for compliance with laws and regulations that may have a material effect upon each major Federal assistance program. Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for

compliance with Federal laws and regulations that apply to such transactions. Any of these tests may be charged to the Federal financial assistance programs. (Such charges shall be made in accordance with paragraph 14b of the Appendix.)

Records Retention.

Paragraph 13 of the new appendix requires that audit workpapers and reports be retained for a minimum of three years. This requirement does not diminish or alter any other recordkeeping obligation, such as section 437(a) of the General Education Provisions Act, imposed upon financial assistance recipients. Where other financial or audit related records retention requirements imposed by law or regulations exceed three years, persons affected by paragraph 13 are to retain audit workpapers and reports for the length of time set forth in such laws or regulations.

Executive Order 12291

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

Regulatory Flexibility Act Certification

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

The Act and paragraph 14 of the Appendix specify that audit costs may be charged to Federal assistance programs. Generally, the percentage of costs charged to Federal assistance programs shall not exceed the percentage of Federal funds expended to total funds expended by the recipient in a fiscal year, unless higher actual costs can be documented. Further, under the prior regulations, Attachment P to OMB Circular A-102, all Federal financial assistance was subject to audit. Under the Single Audit Act and these regulations, assistance under $25,000 is exempt. Finally, the broader and more selective audit coverage of the Act and the regulations is likely to cost the same or less than the more intensive and more narrowly focused audits currently performed.

Waiver of Proposed Rulemaking Procedures

It is the practice of the Department to publish proposed regulations for comment in accordance with the General Education Provisions Act (GEPA) section 431(b)(2)(A) and 5 U.S.C. 553. However, the Department may waive proposed rulemaking, if appropriate under 5 U.S.C. 553, which permits waiver when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The Single Audit Act of 1984 (Pub. L. 98-502) was enacted on October 19, 1984 for the purpose of establishing uniform requirements for audits of Federal financial assistance provided to State and local governments (31 U.S.C. 7501 note). The Act establishes specific mandatory procedures and requirements for such audits. The Act further directs the Office of Management and Budget (OMB) to prescribe policies, procedures, and guidelines to implement the Act (31 U.S.C. 7505(a)). In order to achieve the Act's purpose of establishing uniform audit requirements, the Act mandates each Federal agency, including the Department, to amend its regulations in order to conform to the requirements of the Act and the OMB directive.

On December 20, 1984, OMB issued a draft Circular implementing the requirements of the Act. The draft Circular was published in the **Federal Register** on December 26, 1984, 49 FR 50134, at which time OMB solicited public comment on the draft. OMB received comments from State and local government officials, auditors, and other interested parties. OMB considered these comments and, on April 12, 1985, issued Circular No. A-128 to implement the Act. Paragraph 21 of the Circular directs each Federal agency to include the provisions of the Circular in its regulation implementing the Single Audit Act. By a memorandum dated April 24, 1985, OMB indicated to Federal agencies that Circular A-128 should be added verbatim to their regulations by using an "interim final rule" with a 60 day comment period.

Considerable comment from the general public on the Circular has already been sought and received by OMB. On its face, the draft Circular informed the public that the Circular, which is being adopted by the Department in this rulemaking, was intended to operate as a government-wide regulation. Thus, persons affected by this rulemaking have had a full opportunity to comment on the substance of the Circular. As noted above, the Department is obliged to adopt the provisions of Circular A-128 and, by this rulemaking, does so without substantive change. For these reasons, the Secretary has decided for good cause to waive proposed rulemaking on this adoption of the Circular by the Department of Education as unnecessary and contrary to the public interest.

Nevertheless, in order to obtain further public comments, which will be shared among all agencies affected by the Circular, the Secretary invites interested parties to comment on this regulation.

Comments may be sent to the address given at the beginning of this document. All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 3614, ROB-3, Seventh & D Streets, SW, Washington, DC 20202, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), approval for the collection of information requirements in this regulation will be obtained by the Office of Management and Budget.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 74

Administrative practice and procedures, Grant programs-education, Grants administration.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: September 10, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 74 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 74 continues to read as follows:

Authority: 5 U.S.C. 301.

2. In § 74.61, paragraph (h)(1) is revised to read as follows:

§ 74.61 Financial management standards.

* * * * *

(h) *Audit—(1) General.* (i) This paragraph applies to each recipient that is not subject to the audit requirements in Appendix G to this part.

(ii) Public hospitals and public colleges and universities are subject to this paragraph if excluded under paragraph 4 of Appendix G to this part.

(iii) A financial and compliance audit shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." [1] The auditors engaged by a recipient shall meet the criteria for qualifications and independence in that publication.

* * * * *

3. Section 74.62 is revised and a cross-reference is added after § 74.62 to read as follows:

§ 74.62 Audit requirements for State and local governments.

The audit requirements for State and local governments that receive Federal financial assistance are described in Appendix G to this part.

(20 U.S.C. 3474)

Cross Reference: Audit Requirements for State and Local Governments—See Appendix G.

4. A new Appendix G is added to read as follows:

Appendix G—Audit Requirements for State and Local Governments

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, Unitied States Code.

d. "Generally accepted accounting principles" has the meaning specified in the genereally accepted government aduiting standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means"

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resources use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band , nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

[1] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) the review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix C "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," and 34 CFR Part 74, Subpart G, "Cost Sharing or Matching."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statues, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency

Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the

resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extent the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR Part 74, Appendix C, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments.'

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR Part 74, Subpart P, "Procurement Standards." The standards provide that while recipients are encouraged to enter into intergovermental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

Attachment to Appendix G

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[FR Doc. 85-21922 Filed 9-12-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Statue of Liberty National Monument

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The National Park Service is closing the Statue of Liberty National Monument to all public use through July 4, 1986. This action is necessary because of serious health and safety hazards present during the repair and restoration of the Statue of Liberty and adjacent facilities. Visitation to the Statue of Liberty has declined by seventy percent over the past year because of increased construction activity. There will be some minor effect on a few small businesses but there is no way to avoid this effect. The closure of Liberty Island cannot be avoided without compromising the quality and cost of renovation of the Statue and supporting facilities. The closure of Liberty Island has been phased in with closure of the Statue of Liberty itself occurring over a year ago. This phasing has resulted in mininmal economic impact.

DATES: This interim rule shall become effective September 13, 1985 and will expire on July 5, 1986. However, written comments regarding the closure will be accepted until October 15, 1985.

ADDRESS: Comments should be addressed to: David Moffitt, Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: David Moffitt, Superintendent, Statue of

Liberty National Monument, Liberty Island, New York, New York 10004, (212) 732-1236.

SUPPLEMENTARY INFORMATION:

Background

The Statue of Liberty will be 100 years old in 1986. In preparation for its centennial the Secretary of the Interior established the Statue of Liberty-Ellis Island Centennial Commission. The establishment of this Commission was announced by the President of the United States, at the White House, on May 18, 1983. The Commission was charged with the responsibility of planning for Centennial Celebrations and to advise the Secretary on the restoration and preservation of the Statue of Liberty and Ellis Island.

In addition to the Statue of Liberty-Ellis Island Centennial Commission, the Statue of Liberty-Ellis Island Foundation was established. The role of the Foundation is to raise funds, through public subscription, to finance the restoration and preservation of both Ellis Island and the Statue of Liberty. A memorandum of understanding was accomplished between the National Park Service and the Statue of Liberty-Ellis Island Foundation. The role of the "Foundation", in addition to raising the necessary funds for the restoration and preservation of the Statue of Liberty and Ellis Island, is to contract for all planning and construction work on Ellis Island. Work commenced on Liberty Island in November 1983.

The stated goal of the National Park Service and the Statue of Liberty-Ellis Island Foundation is to completely restore and rehabilitate the Statue of Liberty and Liberty Island prior to July 4, 1986, the date of the first major Centennial celebration. Aside from the repair and restoration of the Statue, major improvements to visitor facilities on Liberty Island have also been planned. This work includes major re-landscaping, enlargement of the present concession building and total rehabilitation of the museum within the base of the Statue of Liberty.

Work on the Statue of Liberty has progressed in an orderly and timely manner. Construction work on the remainder of the island includes landscaping, enlargement of concession facilities, museum rehabilitation, and the use of heavy equipment in order to facilitate the accelerated work program and avoid delays in completing the project. Lehrer/McGovern, the construction Manager for the Statue of Liberty-Ellis Island Foundation has informed the National Park Service, through the Foundation, that Liberty Island must be closed to all public visitation as quickly as possible. We concur with this recommendation of Lehrer/McGovern based on a concern for the health and safety of the visiting public. Construction activities must be initiated in all public use areas not later than June 24, 1985 in order to insure completion by July 4, 1986.

The only alternative to closure is not to complete the project as scheduled, which is considered unacceptable by the Department of the Interior and the National Park Service.

A notice was published in the **Federal Register** (50 FR 26415) on June 26, 1985 that temporarily closed the Statue of Liberty National Monument.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rulemaking to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of this regulation: Kevin Buckley, Statue of Liberty National Monument; Leonard A. Frank, North Atlantic Regional Office, Boston, Massachusetts.

Paperwork Reduction Act

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291. The Department has also determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This finding is based on the fact that the total economic effect of this rulemaking will impose no significant costs on any class or group of small entities. Visitation to Liberty Island has dropped by seventy percent during the past year and this additional closure will have minimal additional impact.

The National Park Service has determined that this rulemaking will not have effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental policy in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR Part 7 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SERVICE

1. The authority citation for 36 CFR Part 7 continues to read as follows:

Authority: 16 U.S.C. 1.3, 9a, 462(k).

2. By adding a new § 7.44 to read as follows:

§ 7.44 Statue of Liberty National Monument.

Closure. The Statue of Liberty National Monument is closed to all public use and access through July 4, 1986.

Dated: August 9, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21942 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN-018; A-4-FRL-2895-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Tennessee: Approval of TCM Portion of CO SIP for Nashville-Davidson County; Redesignation of a TSP Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves two State Implementation Plan (SIP) revisions submitted by Tennessee which were proposed for approval on March 20, 1985 (50 FR 11183). One involves a revision to the transportation control measure (TCM) portion of the 1982 carbon monoxide (CO) SIP for Nashville and Davidson County and the other involves the redesignation of the La Follette particulate (TSP) nonattainment area to attainment.

On February 3, 1983, EPA proposed to disapprove Tennessee's 1982 CO SIP for the metropolitan Nashville-Davidson County area. The disapproval was partially based upon Nashville's failure to implement the transportation control plan (TCP) portion of their SIP. Since that time, Nashville has reconsidered and submitted the revised TCP portion and has satisfied EPA's transportation control measure (TCM) requirements by substituting measures from the contingency plan for those measures not implemented.

The redesignation of the La Follette TSP nonattainment area is based on eight quarters of ambient monitoring data showing attainment and an EPA-approved control strategy.

DATE: These actions are effective October 15, 1985.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Mr. Archie Lee, Air Management Branch, EPA Region IV at the above address and telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On July 18, 1984, Tennessee submitted two SIP revisions for EPA approval. Supplemental information was submitted on July 27, 1984. These revisions went to public hearing in Nashville on May 4, 1984, and were approved by the Tennessee Air Pollution Control Board on June 4, 1984. EPA proposed approval on March 20, 1985 (50 FR 11183). No comments were received in response to that proposal, so EPA today approves these revisions as discussed below.

Transportation Control Plan for Nashville-Davidson County

The 1977 Amendments to the Clean Air Act added a new Part D to Title I of the Act. Under this Part, the states were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95).

The revised plans were to provide for attainment by December 31, 1982, unless the state demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (Section 172(a)(2)), and formally requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (Section 172(c)). This second SIP revision had to be submitted by July 1, 1982 (Section 123(c) (uncodified) Pub. L. 95-95).

As detailed in the **Federal Register** of February 3, 1983 (48 FR 5058), the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County CO nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date for the CO standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 CO SIP revision on June 30, 1982, and EPA proposed to disapprove it on February 3, 1983. The Metropolitan Government of Nashville and Davidson County Health Department submitted comments in which they addressed our proposed disapproval. For a full discussion of this SIP revision and EPA's evaluation of it the reader may consult the February 3, 1983 (48 FR 5058), proposal notice.

Since the date of publication of the proposal notice, the TCM's have been revised to satisfy EPA requirements. The implementation of the signal optimization program is underway. Also, the return to the 1980 level of service for transit TCM has been replaced with a two-cent gas tax equivalent TCM and the ridesharing program measures from the contingency package. EPA has concurred with these revisions and is today fully approving the 1982 Transportation Control Plan for the Nashville-Davidson County CO nonattainment area.

Redesignation of La Follette TSP Nonattainment Area

Tennessee has requested that EPA change the attainment status of a portion of the City of La Follette in Campbell County from primary and secondary nonattainment for TSP to attainment. Tennessee has submitted ambient air quality data collected at a monitoring site in La Follette as the basis for the redesignation request. Specifically, the most recent complete eight quarters of air quality data (1982 and 1983) show no violations of the TSP NAAQS as summarized below.

La Follette	MAX 24-hr, $\mu g/m^3$		AGM	NAAQS		
	1st	2nd		Primary*	Secondary*	AGM**
1982	168	129	58	260	150	75
1983	156	121	56			

* Not to be exceeded more than once per year.
** This is one yearly number, not to be exceeded.

Therefore, on the basis of eight quarters of air quality data showing attainment and evidence of an EPA-approved control strategy, EPA proposes to approve the redesignation of the La Follette TSP nonattainment area to attainment. For more details, see the proposal notice of March 20, 1985 (50 FR 11183).

Final Action

EPA has reviewed the submitted material and found it to meet EPA requirements. EPA is today approving: (1) The Transportation Control Plan part of the 1982 CO SIP for Nashville-Davidson County because revisions to the TCM's have been made and (2), the redesignation of the La Follette TSP nonattainment area to attainment on the basis of eight quarters of air quality data and an EPA-approved control strategy.

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

proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects

40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Carbon monoxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(68) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(68) Revisions in the TCM portion of the 1982 CO SIP for Nashville-Davidson County, submitted on July 18, 1984, and adopted on June 4, 1984.

(i) *Incorporation by reference.* (A) Air Pollution Control Board of the State of Tennessee Board Order 13 84, which is a statement of intent to adopt two-cent gas tax equivalent measures in place of return of 1980 level of service in Nashville-Davidson County CO SIP TCM; and July 18, 1984 letter from the Tennessee Department of Health and Environment which approves the Metropolitan Nashville and Davidson County Legally Enforceable Limits and Schedules effective June 4, 1984.

(ii) *Additional materials.* (A) Revision of the calculations on reductions due to implementation of the Rideshare Program submitted on July 18, 1984.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 81—[AMENDED]

3. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

4. Section 81.343 is amended by consolidating the two Campbell County entries of the Tennessee—TSP table into a single entry reading as follows:

§ 81.343 Tennessee.

Tennessee—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Campbell County			*	
* * *	*	*	*	*

[FR Doc. 85-21812 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SWH—FRL-2896-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today granting final exclusions for the solid wastes previously generated at two particular facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "site-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

In addition, the Agency is responding to comments received on a study it conducted on polynuclear aromatic hydrocarbons as it affects our decision to grant the exclusion petitions filed by the Amoco Oil Company and the Cincinnati Metropolitan Sewer District.

EFFECTIVE DATE: September 13, 1985.

ADDRESS: The public docket for these final exclusions is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000. For technical information contact Mr. Myles Morse, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION: On September 21, 1984, EPA granted (on a one-time basis) a final exclusion to the Cincinnati Metropolitan Sewer District (MSD) for the sluiced bottom ash generated from their incineration facility and contained in one of their two on-site lagoons (*i.e.*, the North Lagoon); the Agency deferred its decision on the sluiced bottom ash contained in the South Lagoon, however, due to potentially hazardous levels of certain polynuclear aromatic hydrocarbons (PNAs) found in the waste. See 49 FR 37068–37069; see also 49 FR 8965–8966, March 9, 1984. On October 23, 1984, the Agency also proposed to exclude (on a one-time basis) 150 million gallons of dissolved air flotation sludge (contained in four surge ponds) after chemical stabilization that will be generated by the Amoco Oil Company (Amoco) in Wood River, Illinois. See 49 FR 42589–42593. In that notice, the Agency also expressed concern over the level of PNAs found in the waste.

Since those notices were published, the Agency has completed a study on PNAs to determine: (1) The toxicity of the various PNAs, (2) background levels of PNAs normally found in the environment, and (3) the ability of PNAs to migrate from a waste into the environment. In particular, the Agency wanted to determine whether PNAs should be added as a basis for listing the sluiced bottom ash (contained in the South Lagoon) generated by MSD and the chemically stabilized dissolved air flotation sludge generated by Amoco. This study was made available for public comment on May 9 of this year (see 50 FR 19551).

Based upon the information contained in the PNA study, the Agency believes that the level of PNAs found in the wastes of these two facilities would not pose a threat to human health and the environment. This study was undertaken to enable the Agency to make a decision on these petitions; it does not represent the definitive Agency analysis of the mobility of PNAs. Since the PNA content in the waste was the

only remaining issue, (*i.e.*, based upon our tentative decisions to grant these exclusion petitions and based upon the comments received on our proposed decisions, no other issues were raised which would indicate that the petitions should not be granted), this notice makes final our decision to exclude these wastes from the list of hazardous waste. (See the specific discussion in this notice for a more detailed explanation of our basis for excluding these wastes.)

These actions are being taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners also have provided information in order for the Agency to consider whether any other toxicants are present in the waste at levels of regulatory concern. The purpose of today's action is to grant final exclusions to Amoco and MSD and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage these wastes as non-hazardous in accordance with any conditions of the exclusion. In addition, generators are still obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required under the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated all factors (including additional constituents) for which there was a reasonable basis to believe that they could cause these wastes to be hazardous. These petitioners have demonstrated through extensive organic screening; EP toxicity test data for all EP toxic metals; oily waste EP toxicity test data (where appropriate); test data on the four hazardous waste characteristics; and in some cases additional test data, including total organic carbon and total oil and grease, that their wastes do not exhibit any of the hazardous waste characteristics and do not contain any other toxicants at levels of regulatory concern. The Agency, in its proposal to exclude the wastes covered by this rule, provided all pertinent information necessary to evaluate the additional factors. In addition, as indicated earlier, the Agency also made available for public comment a study which has been used by the Agency to evaluate the concentrations of PNAs found in the treatment residues petitioned for exclusion by MSD and Amoco.

It also should be noted that the Agency recently proposed to use a dispersion model in evaluating the migratory potential of toxicants from wastes which are landfilled. (See 50 FR 7882, February 26, 1985.) This change in review procedure was developed to assist in standardizing the petition review process. The petitioners in today's publication were not required to undergo review using this proposed approach, since our decisions regarding the hazardous potential of these wastes were proposed under previous procedures. We have decided to proceed to exclude these wastes from the lists of hazardous wastes without applying this dispersion model for two reasons. One, we have not fully evaluated the public comments on the model at this time and thus are not prepared to use it in making final delisting decisions. Second, no public comments were received which questioned the technical decisions to exclude the wastes listed below,[1] under the rationale advanced in the proposed rule.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, no State delisting programs are presently authorized. The final exclusions granted today, therefore are issued under the Federal program. States, however, still can decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system, (*i.e.*, both Federal RCRA and State non-RCRA programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

[1] Comments addressing other points such as terminology or sampling under the contingency plans were received and are addressed separately below.

The exclusions made final today involve the following petitioners:

Amoco Oil Company, Wood River, Illinois

Cincinnati Metropolitan Sewer District, Cincinnati, Ohio

I. Amoco Oil Company

A. Proposed Exclusion

The Amoco Oil Company (Amoco) has petitioned the Agency to exclude (on a one-time basis) approximately 150 million gallons of its dissolved air flotation sludge (contained in four surge ponds) after chemical stabilization (Chemfix®), from EPA Hazardous Waste No. K048. Amoco claimed that the Chemfix® treatment technology would bind all inorganic constituents within the waste matrix. In addition, Amoco claimed that any hazardous organic constituents, if present, are either at non-hazardous levels or are bound within the waste matrix. Amoco submitted test data from representative samples which included total digestion for metals, EP toxicity and oily waste EP toxicity test data, multiple extraction test data, oily waste multiple extraction test data, and total analyses for 95 potential organic contaminants.

Based upon this data, the Agency proposed to grant a conditional exclusion to Amoco, which would require continuous daily batch testing for lead and total chromium using the EP toxicity test and deposition of the treated waste into removable molds in the landfill area. At the same time, the Agency expressed concern over the presence of several PNAs in the waste.[2] The Agency was specifically concerned with the combined levels of benzo(a)pyrene, benzo(a)anthracene, chrysene, fluorene, naphthalene, phenanthrene, and pyrene and indicated a study would be undertaken to determine whether the PNAs should be added as a basis for listing the waste.[3] (See 49 FR 42589–42593, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Amoco's petition).

B. Agency Response to Public Comment

The Agency received one comment from the petitioner requesting three modifications to the contingency testing program. First, Amoco requested that

[2] Since this waste was not listed due to its PNA content and since our decision was proposed before enactment of the Hazardous and Solid Waste Amendments of 1984, our proposed decision to exclude this waste was not based on the PNA content found in the waste.

[3] As discussed earlier, this study was completed, and made available for public comment on May 9 of this year (see 50 FR 19651).

the daily composite testing requirement be limited to the first 30 days of the treatment period. Amoco proposes that if the variability of the data from this period is acceptable to the Agency (*i.e.*, if the leachate concentrations exhibit low relative standard deviations), then the testing requirement be reduced to every third day. (The petitioner indicated that daily composites would still be collected and maintained for verification. Second, Amoco requested that they be allowed to combine the two daily composites (one for each trailer) into a single sample for analysis. Amoco based these requests on the contention that representative sampling already performed on the impounded wastes would have identified any hotspots or stratification. In addition, Amoco claims that the impounded waste will be thoroughly homogenized by the Chemfix® process before treatment, resulting in a uniform waste. Third, Amoco requested that the treated waste not be required to be placed in removable molds to contain each day's production of the treated waste. Amoco contends that each day's production of treated waste can be isolated using cells created by berming the solidified treatment residue from previous days.

The Agency generally agrees with Amoco's first comment, that once homogenized, the likelihood that the treatment residue will exhibit variability will be reduced. Due to the large volume of waste involved, however, the efficacy of the Chemfix® process to homogenize the waste before treatment remains to be seen, especially since all of the data provided in support of this petition is based upon laboratory scale equipment. The contingency plan, therefore, will require daily composite testing. The Agency will review this data after the initial 30 days of operation. If the variability of the extract levels is low, Amoco may request that the Agency remove this requirement. Before the condition would be removed, however, the Agency would publish the data for notice and public comment. Regarding Amoco's second comment, the Agency believes that combined daily composites are not appropriate in this case, due to the large volume of treatment residue to be generated each day, and the possibility that certain portions of the waste may contain higher levels of contaminants. While the Agency generally agrees that the samples that Amoco took from the lagoon are representative, the Agency believes that there is a likelihood that some areas of the lagoon may not be well mixed. Since this compositing would essentially create one analysis for twice the generation rate, it may result in excessive averaging for the constituent concentrations in the residue. The Agency believes that requiring two daily composites (one for each trailer) is more appropriate, since each trailer processes in excess of 700,000 gallons of waste per day.

The Agency's primary concern in requiring removable cells was to assure that each day's production of treated waste was identifiable and if necessary, removable, in the event that the treatment process did not adequately stabilize the waste. Amoco's request to use bermed cells created from the solidified treated waste from previous days of operation is acceptable. The Chemfix® treated waste is a highly impermeable matrix similar to soil and clay, which can serve as a material for cell construction. The impermeable material will assure that none of the freshly treated waste will migrate until the required testing is completed. Furthermore, since each cell will be readily discernible from the next during the testing period, the Agency believes that the use of bermed cells can serve the purpose of the removable molds. The Agency, therefore, is not requiring the use of removable molds; however, Amoco's contingency plan now requires the use of bermed cells for each day's treated waste and that these cells be discernible until the waste is demonstrated, by testing, to be non-hazardous.

Amoco also commented on a discrepancy between the acceptable EP extract levels imposed in the contingency plan in the proposed exclusion published on October 23, 1984 and the correction notice published on December 5, 1984. The preamble of the proposed exclusion required a 0.5 ppm limitation while the correction notice, which included the proposed rule, identified a 1.5 ppm testing limit for lead and total chromium.[4] Amoco requested that the preamble be corrected to indicate the 1.5 value noted in the rule.

The Agency notes that the 1.5 ppm limit cited in the proposed rule was incorrect and should have reflected the 0.5 ppm level discussed in the preamble. The lower 0.5 level was used as the maximum acceptable extract limit in the contingency plan since the EP toxicity test was being used as the daily indicator test, rather than the Oily Waste EP toxicity test. In particular, the data submitted by Amoco generally indicates that the Oily Waste EP extract levels for lead were three times higher than the extract levels generated by the EP test. The acceptable extract level was set at 0.5 ppm, which is one-third of the level which would have been considered acceptable in this situation (if the waste had not been an oily waste) to allow the use of the EP toxicity test as the daily indicator test in the contingency testing program. The Agency notes that this limit was set in response to Amoco's request to be allowed to use the EP toxicity test rather than the Oily Waste EP toxicity test in their contingency testing program.

C. Final Agency Decision

Based upon samples of the waste taken from the four surge ponds indicating low extract values generated from corresponding Oily Waste EP toxicity tests, and Multiple Extraction Procedure (MEP) and Oily Waste MEP test data, Amoco has demonstrated that the Chemfix® treated waste successfully binds the inorganic toxicants within the matrix of the residue, thereby limiting their mobility. Oily Waste EP toxicity tests produced maximum lead and chromium levels of 1.28 and 0.32 ppm, respectively. These extract levels are twenty-six and six times the National Interim Primary Drinking Water Standards, respectively. Attenuation and dilution in the environment are expected to further reduce these lead and chromium levels below the National Interim Primary Drinking Water Standards. The Agency further believes that the matrix of the Chemfix® materials has a high binding capacity for metals and will decrease their mobility in the field.

The Agency further believes that the Chemfix® treated waste will not contain sufficient quantities of volatile organics to be of regulatory concern. Low levels of benzene (less than 1 ppm), toluene (less than 5 ppm), chloroform (less than 1 ppm), and 1,1-dichloroethylene (less than 1 ppm) were detected in the untreated waste. These levels are expected to be reduced somewhat by the treatment process (due to

[4] The Agency wishes to clarify statements made in the proposed exclusion (49 FR 42588, October 23, 1984) and the correction notice (49 FR 47510, December 5, 1984) with regard to chromium in Amoco's waste. Although hexavalent chromium is the listed constituent for EPA Hazardous Waste No. K048, the Agency also regulates wastes for total chromium as an EP toxic metal. The Agency has proposed to modify the EP toxicity characteristic to regulate hexavalent chromium rather than total chromium. This proposal has not been made final, however, and the Agency has not yet decided whether it should be made final. Since analysis for total chromium content is inclusive of hexavalent chromium, conditioning Amoco's waste for total chromium satisfies the regulations for the EP toxicity characteristic as well as for the listed constituent.

volatilization during the mixing process); in addition, these contaminants are expected to be further reduced due to attenuation in the environment. The presence of these constituents, therefore, is not expected to cause the waste to be hazardous. The only other toxic constituents found in the waste were the PNAs.

As indicated earlier, the Agency has completed its PNA study. Based upon this study, the Agency has determined that the PNA levels contained in the treated Amoco's waste are non-hazardous. The Agency had been primarily concerned with the presence of those PNAs that could be considered human carcinogens or potential human carcinogens. The Agency has determined from its PNA toxicity literature evaluation that a number of PNAs have not been adequately evaluated for potential carcinogenicity or mutagenicity. Until the Agency's Carcinogen Assessment Group (CAG), a division of the Office of Research and Development (ORD), evaluates each PNA for potential carcinogenicity, the Agency will evaluate delisting petitions only using the CAG carcinogens identified by ORD. (The Agency will also evaluate petitions for other toxicological effects when known. In this case, the only toxicity associated with the PNAs found in the waste is carcinogenicity.) Three of the six potential PNA carcinogens identified by CAG were found in Amoco's waste.[5] The maximum concentration of the PNAs regarded by CAG as carcinogens found in Amoco's waste are displayed in Table I.

Table I.—Concentrations of Potentially Carcinogenic PNAs

	Maximum [1]
Benzo(a)pyrene	3
Benzo(a)anthracene	11
Chrysene	8

[1] Concentration (ppm).

In its investigation of PNAs, the Agency collected data on the mobility of PNA compounds from materials of similar composition to the Chemfix* material. Data collected on fly ash wastes revealed that very little data on PNA mobility into water were available. The available data, however, do indicate that PNAs were not detected in water extracts from typical coal fly ash residues at a detection limit of approximately 1 ppb.[6] Data collected by the Agency during its evaluation of a new leachate test procedure also indicated that PNAs were not detected in water extracts of municipal fly ash residues at a detection limit of 1 ppb.[7] Since the Agency was concerned that PNAs may be more mobile from an oily matrix that has been Chemfix* treated than from fly ash residues, Amoco was requested to present data on mobility of PNAs in the Chemfix* treated residues using the Oily Waste EP (OWEP). Amoco provided data only using the EP toxicity test and the Multiple Extraction test.[8] Amoco did not perform the Oily Waste EP for PNAs because they believed that the OWEP would provide the same results as the original total constituent analysis of the waste. That is, Amoco stipulated that a strong solvent extraction would release all (or essentially all) of the organic material from the waste. The data from the aqueous extractions showed non-detectable extract levels at a detection limit of 10 ppb. These non-detectable extract levels support the fact that PNAs will not be released in significant quantities from the Chemfixed residue. While the Agency is not basing its decision solely upon this data, we believe they generally support the fact that aqueous media will not mobilize organics from the Chemfix* treated waste.

Based upon information gathered for the PNA report, the Agency believes that the levels of PNAs in Amoco's treated waste are not hazardous.[9] Use of the SESOIL model to predict the migration potential of benzo(a)pyrene (BaP) under worst-case conditions (a permeable soil with low organic content) indicated that no significant migration of BaP occurred, even for wastes containing up to 20 ppm Bap. By analogy, the PNAs present in Amoco's waste, which has been Chemfix* treated, would not be expected to migrate. In addition, none of the potentially carcinogenic PNAs, as identified by CAG, are present in Amoco's waste at concentrations in excess of 20 ppm. Furthermore, the SESOIL model would likely predict migration potentials for benzo(a)anthracene and chrysene similar to BaP, due to their size (both are 4-ringed PNAs) and their solubilities in water relative to BaP (5.7×10^{-3} mg/l for benzo(a)anthracene and 6×10^{-3} mg/l for chrysene; 3.8×10^{-3} for BaP). Due to their low solubility in water relative to other organics and the waste's capacity to bind the oil, the Agency believes that the levels of PNAs in Amoco's Chemfix* treated waste will not pose a hazard to human health.

The Agency, therefore, considers Amoco's treated waste generated from the Chemfix* treatment process to be non-hazardous for all reasons and believes it should be excluded from hazardous waste control under the conditions specified below. Due to the large volume of waste contained in Amoco's impoundments, the high content of toxic metals in the waste, and the fact that the data in the petition was based upon laboratory and pilot scale data, the Agency is requiring testing of the treated waste to assure that stabilization occurs and that each day's treated waste be identifiable and retrievable as follows:

(1) Mixing ratios should be monitored continuously to assure consistent treatment, and to ensure that they do not vary outside the limits presented by Amoco in their exclusion petition.

(2) One grab sample of the treated waste should be taken each hour as it is pumped to the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity test [11]

[5] The three PNAs identified as potential human carcinogens *not* detected in Amoco's waste were dibenz[a,h]anthracene, indeno(1,2,3-c,d)pyrene, and benzo (b)fluoranthene.

[6] See "Estimating Leaching of Polycyclic Aromatic Hydrocarbons from Waste," JRB Associates Draft Report, 1984.

[7] The Agency notes that the reference of water and acetic acid or sodium acetate extract procedures is made here in an attempt to show the extremely limited mobility of PNAs from wastes containing alumino-silicates. The Agency presently does not have an approved extraction procedure to determine the mobility of organics. The Agency is not at this time recommending the use of these tests as accurate tools to determine this mobility. The Agency is developing a proper test procedure to determine this mobility. Comparison of early data indicates that these tests may reasonably estimate the mobility of PNA constituents from an alumino-silicate waste matrix. (See Mobility of Toxic Compounds from Hazardous Waste PB-117-034; and Mobility of Toxic Compounds from Hazardous Waste: Phase 2 Comparison of Three Test Methods to a Lysimeter Model, Oak Ridge National Laboratory, May 1984. Interagency Agreement DOE 40-1087-80.)

[8] This data was made available for public comment in 50 FR 19550-19551, May 9, 1985.

[9] This determination is based upon the soil organic carbon partition coefficient, results obtained from the SESOIL model, and the fact that PNAs, when placed on alumina and silica chromatographic plates showed no measurable migration without the use of non-polar solvents (such as benzene, cyclohexane, etc.). Using these approaches, the results of the evaluations indicated that at levels of 20 ppm and less, PNAs in matrices similar to soils would not be expected to migrate from the waste. See the PNA study (available in the public docket) for a more detailed discussion.

[11] Since the results obtained using the Oily Waste EP were consistently higher by a factor of three than those obtained using the EP toxicity test, the Agency correlated these results and imposed a limitation of 0.5 ppm to correspond to this relationship. The limit was set at one-third of the

Continued

will be run on the two composite samples. If lead or total chromium concentrations exceed 0.5 ppm in the extract, the waste will be removed and retreated or disposed of as a hazardous waste.

(3) The treated waste must be pumped into bermed cells which are constructed to assure that the treated waste generated each day is identifiable and retrievable (*i.e.*, the material can be removed and either disposed of as a hazardous waste or re-treated if conditions 1 or 2 are not met).

The Agency believes that Amoco's treated waste generated by the Chemfix* process is non-hazardous under the conditions specified above. The Agency is therefore granting a final, conditional one-time exclusion to Amoco for the product that will result from the chemical stabilization of the dissolved air flotation float presently contained in four surge ponds at their Wood River, Illinois site. This exclusion does not apply to the four surge ponds or to the non-stabilized dissolved air flotation float.

II. Cincinnati Metropolitan Sewer District

A. Proposed Exclusion

The Cincinnati Metropolitan Sewer District (MSD) has petitioned the Agency to exclude (on a one-time basis) sluiced bottom ash contained in two on-site lagoons. MSD burns hazardous wastes F001, F002, F003, F004, and F005 along with sewage sludge.[12] The mixed ash is slurried with wastewater from the municipal wastewater treatment plant and pumped to the lagoons for dewatering. MSD requested delisting for the contents of both lagoons, which together contain approximately 50,000 cubic yards of ash.

MSD claims that the ash in these lagoons is non-hazardous due to the destruction of the hazardous constituents during combustion. MSD further claims that 99.75 percent of the incinerated waste which produces this ash is municipal waste, while only 0.25 percent of the incinerated waste is industrial waste (of which a smaller percentage are the listed hazardous wastes). MSD also provided data which indicate non-detectable concentrations of the listed solvents, with the exception of methylene chloride. Methylene chloride levels ranged from non-detectable to 1.9 ppm in the ash. (See 49 FR 8965, March 9, 1984). MSD also submitted data on the other non-listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated that the waste contained in the South Lagoon contains certain PNAs at potentially hazardous levels.[13] (See 49 FR 8965–8966, March 9, 1984, for a more detailed explanation of why EPA proposed to grant MSD's petition.)

B. Previous Agency Action and Response to Public Comments

On September 21, 1984, the Agency granted a final exclusion to MSD for its sluiced bottom ash contained in the North Lagoon since it contained non-hazardous levels of the listed solvents as well as non-hazardous levels for all other toxicants expected to be present in the waste, including the polynuclear aromatic compounds (PNAs). (See 49 FR 37067). The Agency also indicated that the level of solvents found in the South Lagoon were not of regulatory concern. The Agency and one public commenter, however, shared concerns over the potential toxicity of PNAs in the South Lagoon. The same commenter voiced concern that the Agency had not performed the necessary studies to determine whether the PNAs should be added as a basis for listing the waste. Since the Agency was considering including these toxicants as a basis for listing this waste, no final decision was made to delist the waste contained in the South Lagoon. Rather, the Agency chose to defer any final decision until an investigation evaluating these PNA levels (*i.e.*, chrysene 17.5 ppm, benzo(a)pyrene 16.6 ppm, etc.) was completed. This study was to include an evaluation of available toxicity information, retardation factors for PNAs in soils and ash, and an evaluation of PNA levels contained in non-hazardous incineration ash.

C. Final Agency Decision

As indicated on September 21, 1984, the Agency believes that this waste is non-hazardous except possibly for the ash in the South Lagoon. As a result, the Agency undertook a study to determine the hazardous potential of PNAs in materials such as fly ash. As a result of toxicity analyses, evaluation of background PNA levels in non-hazardous ashes, and their mobility from non-hazardous ashes, the Agency has determined that the PNA levels contained in the waste contained in MSD's South Lagoon are non-hazardous. The Agency had been primarily concerned with the presence of those PNAs that could be considered human carcinogens or potential human carcinogens. The Agency has determined from its PNA toxicity literature evaluation that a number of PNAs have not been adequately evaluated for potential carcinogenicity or mutagenicity. Until the Agency's Carcinogen Assessment Group (CAG), a division of the Office of Research and Development (ORD), evaluates each PNA for potential carcinogenicity, the Agency will evaluate delisting petitions only using the CAG carcinogens identified by ORD. (The Agency will also evaluate petitions for other toxicological effects when known. In this case, the only toxicity associated with the PNAs found in the waste is carcinogenicity.) Five of the six potential PNA carcinogens identified by CAG were found in the waste contained in MSD's South Lagoon.[14]

The maximum concentration of PNAs regarded by CAG as carcinogens found in the waste in the South Lagoon are displayed in Table II.

Table II.—Concentrations of Potentially Carcinogenic PNAs

	Maximum[1]
Benzo(a)pyrene	16.66
Dibenzo(a,h)anthracene	3.9
Indeno(1,2,3c,d)pyrene	12.0
Benzo(a)anthracene	16.87
Chrysene	17.54

[1] Concentration (ppm).

In its investigation of PNAs, the Agency collected data on the mobility of PNA compounds from materials of similar composition. Data collected on fly ash wastes revealed that very little data on PNA mobility into water were available. The available data, however, do indicate that PNAs were not detected in water extracts from typical coal fly ash residues at a detection limit of approximately 1 ppb.[15] Data collected by the Agency during its evaluation of a new leachate test procedure also indicated that PNAs were not detectable in water extracts of municipal fly ash residues at a detection limit of 1 ppb.[16] These non-detectable extract levels support the view that PNAs have a high affinity for, and become tightly bound on, material such as fly ash.

---

levels which would have normally been considered acceptable in this situation (*i.e.*, if the waste was not considered an oily waste) in order to allow the use of the EP toxicity test as the daily indicator test in the contingency testing program.

[12] In particular, MSD has requested exclusion of the sluiced bottom ash which contains all the solvents listed in F001, F002, F003, F004, and F005 and is contained in the North and South Lagoons.

[13] See footnote 2.

[14] The sixth PNA identified as a potential human carcinogen, benzo(b) fluoranthene, was not detected in MSD's waste.

[15] Set footnote 6.

[16] See footnote 7.

Based upon the information gathered in the PNA report, the Agency believes that the levels of PNAs in MSD's waste are not hazardous.[17] Use of the SESOIL model to predict the migration potential of benzo(a)pyrene (BaP) under worst-case conditions (a permeable soil with low organic content) indicated that for wastes containing up to 20 ppm BaP, no migration of BaP occurred. None of the potentially carcinogenic PNAs as identified by CAG are present in MSD's waste in excesss of 20 ppm. Furthermore, the SESOIL model would likely predict migration potentials for the other potentially carcinogenic PNAs found in MSD's waste similar to BaP, due to their size (benzo(a)anthracene and chrysene are 4-ringed PNAs; dibenz(a,h)anthracene and indeno(1,2,3-c,d)pyrene are 5-ringed PNAs) and their solubilities in water relative to BaP (5.7×10^{-3} mg/1 for benzo(a)anthracene, 6×10^{-3} mg/1 for chrysene, 5×10^{-3} mg/1 for dibenz(a,h)anthracene, 5.3×10^{-4} mg/1 for indeno(1,2,3-c,d)pyrene; 3.8×10^{-3} for BaP). Due to their low solubility in water relative to other organics and the waste's capacity to bind PNAs, the Agency believes that the levels of PNAs in MSD's waste will not pose a hazard to human health.

The Agency, therefore, is granting a final (one-time exclusion) top MSD for the waste contained in the South Lagoon (which contains residues from EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005) at its Cincinnati, Ohio location.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

[17] See footnote 9.

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

VI. List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: September 4, 1985.

Jack McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix: Response to Public Comments Received Regarding EPA's Review of Polynuclear Aromatic Hydrocarbons

On May 9, 1985, EPA published a notice of availability and request for comment on its review of polynuclear aromatic hydrocarbons (PNAs) with respect to delisting petitions filed by the Amoco Oil Company and the Cincinnati Metropolitan Sewer District (See 50 FR 19550–19551). One comment was received which concerned three points pertaining to the carcinogenic potential of PNAs.

First, the commenter questioned the validity of the Agency's conclusions with respect to classifying the majority of 4, 5, and 6-ringed PNAs as confirmed human or animal carcinogens. The Agency notes that the summary report was not explicit with regard to the exact list of PNAs considered in the literature review. A total of 82 PNAs were considered in the literature review, of which 80% had been evaluated by the International Agency for Research on Cancer (IARC) for carcinogenic risk to humans. For compounds not reviewed by IARC, exhaustive literature searches were performed using computerized toxicological data bases. Sufficient evidence was found to evaluate the carcinogenicity of 68 of the 82 compounds. Of the 68 PNAs for which data was gathered, 6 compounds consisted of two aromatic rings, 10 compounds consisted of three aromatic rings, 39 compounds consisted of four aromatic rings, 6 compounds consisted of five aromatic rings, 6 compounds consisted of six aromatic rings, and 1 compound consisted of seven aromatic rings. The PNAs considered in this study were either 4, 5, or 6-ringed PNAs. Of those 51 compounds, 18 showed sufficient evidence for animal carcinogenicity. An additional 15 PNAs showed limited evidence for carcinogenicity, nine of which were 4-ringed PNAs, four of which were 5-ringed PNAs, and 2 of which were 6-ringed PNAs. IARC defines sufficient evidence of carcinogenicity in animals as an increased incidence of malignant tumors: (1) In multiple species or strains; (2) in multiple experiments (preferably with different routes of administration or using different dose levels; or (3) to an unusual degree with regard to incidence, site, type of tumor, or age of onset. Limited evidence of carcinogenicity in animals, as defined by IARC, means that the data suggest a carcinogenic effect, but are limited because: (1) The studies involve a single species, strain, or experiment; (2) the experiments are restricted by inadequate dosage levels, inadequate duration of exposure to the agent, inadequate period of follow up, poor survival, too few animals, or inadequate reporting; or (3) the neoplasms produced often occur sponstaneously and, in the past, have been difficult to classify as malignant by histological criteria alone. Using the IARC definitions, the correct statement is that 35 percent of the 4, 5, and 6-ringed PNAs evaluated in this study showed sufficient evidence for animal carcinogenicity. An additional 29 percent showed limited evidence for animal carcinogenicity. The Agency has noted these changes and corrected the report as appropriate.

Second, the commenter questioned the Agency's conclusion that half of the 3-

ringed PNAs are suspect human or animal carcinogens. The Agency evaluated ten 3-ringed PNAs in its study. Of those ten compounds, one showed limited evidence for human carcinogenicity and two showed limited evidence for animal carcinogenicity. According to IARC, limited evidence of carcinogenicity in humans means that a casual interpretation is credible, but that alternative explanations, such as chance, bias, or confounding, could not adequately be excluded. An additional compound showed sufficient evidence for mutagenic activity in short-term tests, while an additional three of the ten compounds showed limited evidence for mutagenic activity in short-term tests. IARC defines sufficient evidence for mutagenic activity as a total of at least three positive results in at least two of the three test systems measuring DNA damage, mutagenicity, or chromosomal anomalies. Limited evidence for mutagenic activity is defined as at least two positive results, either from different endpoints or in systems representing two levels of biological complexity. Based upon these definitions, 30 percent of the 3- ringed PNAs show limited evidence for human or animal carcinogenicity. In addition, 10 percent show sufficient evidence for mutagenic activity in short-term tests and 30 percent show limited evidence for mutagenic activity in short-term tests. The Agency has noted these clarifications and corrected the report as appropriate.

Third, the commenter felt that contradictory statements were made in the report regarding the toxicity of 2-ringed PNAs. One sentence stated that data on the 2-ringed PNAs is insufficient to characterize their toxicity; another sentence states that there is no evidence that 2-ringed PNAs are carcinogens or mutagens.

Few of the 2-ringed PNAs have been tested adequately for carcinogenic or mutagenic effects by either animal studies or short-term studies. In most cases, the animal studies conducted have been inadequate for evalaution of the compounds carcinogenic potential. Most of the short-term tests performed on 2-ringed PNAs have shown negative results; however, a few of the tests have shown positive results. In summary, the tests that have been conducted on 2-ringed PNAs have been inadequate to determine their carcinogenic potential. The Agency has noted this comment and has amended the report to reflect this change.

The Agency received no other comments on any other aspect of the PNA report.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6905, 6912, 6921, and 6922).

2. In Appendix IX, add the following waste streams in alphabetical order:

Appendix IX—Waste Excluded under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
. .	. .	. .
Amoco Oil Company	Wood River, IL	150 million gallons of DAF float from petroleum refining contained in four surge ponds after treatment with the Chemfix® stabilization process. This exclusion applies to the 150 million gallons of waste after chemical stabilization as long as the mixing ratios of the reagent with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples; one grab sample is taken each hour from each treatment unit, composited, and EP toxicity tests performed on each sample. If the levels of lead or total chromium exceed 0.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous; the treatment residue shall be pumped into bermed cells to ensure that the waste is identifiable in the event that removal is necessary
. .	. .	. .

TABLE 2.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
. .	. .	. .
Cincinnati Metropolitan Sewer District	Cincinnati, OH	Sluiced bottom ash sludge (approximately 25,000 cubic yards) contained in the South Lagoon, on September 13, 1985 which contains EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005.
. .	. .	. .

[FR Doc. 85-21917 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Parts 420, 455 and 489

45 CFR Part 101

Medicare and Medicaid Programs; Fraud and Abuse

AGENCY: Office of The Secretary, HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule implements sections 2348 and 2370 of the Deficit Reduction Act respectively (1) by limiting payment for services furnished to beneficiaries by a home health agency or hospice whose provider agreement has been terminated, and (2) by expanding subpoena authority for civil monetary penalty hearings under Medicaid. In addition, this rule includes a series of technical changes to reflect the transfer of the responsibility for making fraud and abuse determinations from the Health Care Financing Administration (HCFA) to the Department's Office of Inspector General (OIG).

DATES: This regulation is effective on October 15, 1985.

Even though these regulations are published as final rules, we welcome comments on the provisions by October 28, 1985.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–2, 330 Independence Avenue, SW., Room 5246, Washington, D.C. 20201.

If you prefer, you may deliver comments to Room 5246, 330 Independence Avenue, SW., Washington, D.C. In commenting please refer to file code *LRR–2*. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks from today in Room 5643, 330 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 9:00

a.m. to 5:00 p.m. Phone Number (202) 472-5270.

FOR FURTHER INFORMATION CONTACT: James Patton, (301) 594-3957.

SUPPLEMENTARY INFORMATION:

I. Payment for Home Health and Hospice Services After Termination of Provider Agreements

Section 2348 of the Deficit Reduction Act provides that whenever the Secretary terminates a provider agreement with a home health agency or a hospice, payments may be made for services furnished up to 30 days after the effective date of the termination to beneficiaries who were under a plan of care established prior to the effective date of the termination. Under the law in effect prior to the passage of the Deficit Reduction Act, payments for services furnished to these beneficiaries could be continued until the end of the calendar year in which the termination was effective.

In order to implement this technical amendment, we have made conforming changes to the regulations in §§ 455.208(c) and 455.213(b). In addition, we are revising §§ 420.115(c), 420.126(e), and 489.55 to correct the omission of hospice care services and to make other minor corrections.

II. Expanded Medicaid Subpoena Authority in Civil Monetary Penalty Hearings

45 CFR 101.115(b)(5) and 101.116(b)(2)(ii) originally limited the Department's subpoena power in a civil monetary penalty hearing to cases involving Medicare claims, since Administrative Law Judges who handle civil monetary penalty hearings had no statutory subpoena authority under Title XIX (Medicaid). Section 2370 of the Dificit Reduction Act enacted section 1918 of the Social Security Act to expand the Department's subpoena authority to encompass matters arising under Title XIX. We are amending sections 45 CFR 101.115 and 101.116 to reflect this statutory change.

III. Transfer of Fraud and Abuse Authorities Within the Department of Health and Human Services

On April 18, 1983, Secretary Margaret M. Heckler transferred the authorities for controlling fraud and abuse in the Department's health care financing programs from the Health Care Financing Administration to the Office of the Inspector General (48 FR 21662, May 13, 1983). Specifically, this delegation provides that the OIG will make determinations and effectuate sanctions under sections 1128, 1156(b), 1160(b) (as set forth prior to Pub. L. 97-248), 1862(d) (1) and (2) and 1866(b)(2) (D), (E), and (F).

In accordance with this delegation of authority, we have made conforming changes to HHS regulations in 42 CFR Parts 420, 455, and 469. The changes to regulations dealing with the sanction notification reflect the fact that the notification responsibilities are divided between HCFA and the OIG. In 42 CFR 420.109, 420.123, 420.124, 420.134, 455.210 and 455.230, we have stated that "HHS" will notify these parties to reflect this dual responsibility (i.e., HCFA continues to have the responsibility for notifying Medicare contractors and State agencies; the OIG is responsible for notifying the affected party, the public, and professional societies).

We have also modified 42 CFR 489.53 to state that "HHS" may terminate a provider agreement based on these violations in order to reflect the fact that OIG may terminate agreements for fraud and abuse violations reflected at § 489.53(a) (6), (7), and (8). The OIG was delegated the authority under section 1866(b)(2) (D), (E), and (F) to terminate a provider agreement based on a determination that the provider committed certain acts of fraud or abuse specified in these sections. HCFA has retained the responsibility for terminating provider agreements for all other types of violations specified in section 1866(b)(2), including non-compliance with the conditions of participation, failure on the part of the provider to submit requested information necessary for proper payment determinations, and failure of the provider to disclose information on convicted individuals and on its owners. The causes for termination are listed in the regulations at 42 CFR 489.53(a).

IV. Technical Changes

We have made four additional technical modifications. First, we have clarified our procedures concerning the reinstatement of providers who were previously excluded or terminated due to a fraud or abuse determination. In 42 CFR 420.134, we have added a new paragraph (b) that states that such providers must fulfill, or make arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous provider agreement before such provider is reinstated. Second, we have added in 42 CFR 455.2 a definition for the term "furnished." This is the same definition presently contained in 42 CFR 420.2. In practice this definition has been used for suspensions under 42 Part 455 since May 1979 and reflects no modification to our existing policy. Third, we have included a definition for "suspension" in 42 CFR 420.2 that is consistent with the definition under 42 CFR 455.2.

In addition, we are correcting two errors in the civil monetary penalty regulations. First, through an oversight when the regulations were promulgated on August 26, 1983, a cross reference to the paragraph describing the "Amount of Assessment" (§ 101.104) was omitted from § 101.106(c) (1) and (2). These latter subparagraphs contain the guidelines for determining the amount of penalty and assessment to be imposed, and should contain a cross reference to the former paragraph. The second change relates to the handling of checks for witness fees and mileage in connection with subpoenas. The applicable regulation (45 CFR 101.116(b)(2)(ii)), requires the Department to issue a check for witness fees and mileage and to send the check with the subpoena. However, this requirement does not comport with the policy in Rule 45(c), Federal Rules of Civil Procedure, which provides that with respect to subpoenas in civil cases, "When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered." Under the revised regulation, the Department will reimburse an individual for witness fees and mileage.

V. Impact Analyses

Executive Order 12291

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291 because they will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. We do not expect these regulations to have such an effect.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. The law on which these regulations are based is specific, and

there is little leeway in implementing the requirements. Some of the sanctions that States and the Federal Government will impose as a result of these regulations will have an impact on small entities such as physicians, laboratories and other medical care providers. However, we do not anticipate that a substantial number of these small entities will be significantly affected by the regulations. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that a regulatory flexibility analysis is not required for these regulations.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These interim final rules do not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

Waiver of Notice of Proposed Rulemaking

We find good cause for dispensing with a notice of proposed rulemaking. These rules implement sections 2348 and 2370 of the Deficit Reduction Act, effective on July 18, 1984. These changes are conforming amendments that do not expand upon the statute and merely paraphrase the statutory provisions. This rule also makes technical changes in existing regulations primarily to reflect the transfer of the fraud and abuse determination responsibility from HCFA to the OIG.

We are, however, soliciting public comment concerning the rule. We will carefully consider all comments and publish in the **Federal Register** any revisions resulting from the comments.

List of Subjects

42 CFR Part 420

Abuse, Administrative practice and procedures, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health Maintenance Organizations (HMO), Health professions, Health Suppliers, Information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, Reporting and recordingkeeping requirements, Supervision, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Part 455

Abuse, Administrative practice and procedure, Claim, Conviction, Convicted, Exclusion, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Information (Disclosure), Investigations, Medicaid, Medicaid Fraud Control Units, Medicaid personnel, Penalties, Reporting requirements, Suspension.

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider Agreements, Rural health clinics, Termination procedures.

45 CFR Part 101

Penalties, Medicare, Medicaid, Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child health.

TITLE 42—PUBLIC HEALTH

1. 42 CFR Chapter IV, Parts 420, 455, and 489 are amended as set forth below:

PART 420—PROGRAM INTEGRITY

A. Part 420 is amended as set forth below:

1. The authority citation for Part 420 continues to read as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2), (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

2. In Subpart A, § 420.2 is amended by adding, in alphabetical order, definitions for "HHS", "OIG", "PRO" and "Practitioner", and by revising the definitions for "Provider", "Supplier" and "Suspension" to read as follows:

§ 420.2 Definitions.

* * * * *

"HHS" means Department of Health and Human Services.

"OIG" means Office of Inspector General of the Department of Health and Human Services.

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248.

"Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

"Provider" means (a) hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, Medicaid, or the social services programs, or (b) a clinic, a rehabilitation agency, or a public health agency that has a similar agreement, but only to furnish outpatient physical therapy or speech pathology services.

* * * * *

"Supplier" or *"supplier of services"* means an individual or entity, other than a provider or practitioner, that furnishes health care services under Medicare, Medicaid, or the social services programs.

"Suspension" means that items or services furnished by a specified party who has been convicted of a program related offense in a Federal, State, or local court will not be reimbursed under Medicare or Medicaid.

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

3. The authority citations for Part 420, Subpart B, read as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

4. In Subpart B, § 420.101 is revised to read as follows:

Exclusions or Terminations on Basis of Fraud or Abuse

§ 420.101 Bases for exclusions for fraud or abuse; exceptions.

(a) Payment will not be made under Medicare for items or services furnished by a practitioner, provider, or other supplier of services that the OIG determines has:

(1) Knowingly and willfully made or caused to be made any false statement or misrepresentation of a material fact in a request for payment under Medicare or for use in determining the right to payment under Medicare.

(2) Furnished items or services that are substantially in excess of the beneficiary's needs or of a quality that does not meet professionally recognized standards of health care; or

(3) Submitted or caused to be submitted bills or requests for payment containing charges (or costs) that are substantially in excess of its customary charges (or costs).

(b) The OIG's determination under paragraph (a)(2) of this section, that the items or services furnished were excessive or of unacceptable quality, will be made on the basis of reports, including sanction reports, from the following sources:

(1) The PSRO or PRO for the area served by the practitioner, provider, or other supplier of services;

(2) State or local licensing or certification authorities;

(3) Peer review committees of fiscal agents or contractors;

(4) State or local professional societies; or

(5) Other sources deemed appropriate by the OIG.

4a. Section 420.105 is revised to read as follows:

§ 420.105 Notice of proposed exclusion or termination for fraud or abuse.

(a) If the OIG proposes to deny reimbursement in accordance with § 420.101, or to terminate a provider agreement in accordance with § 489.53(a) (6), (7), or (8) of this chapter, it will send written notice of its intent and the reasons for the proposed exclusion or termination to the practitioner, provider or other supplier of services.

(b) Within 30 days of the date on the notice, the party may submit: (1) Documentary evidence and written argument against the proposed action; or (2) A written request to present evidence or argument orally to an OIG official.

(c) For good cause shown by the party, the OIG may extend the 30-day period.

4b. Section 420.107 (a) and (b) are revised to read as follows:

§ 420.107 Notice of exclusion or termination to affected party.

(a) If, after a party has exhausted the procedures specified in § 420.105, the OIG decides to exclude the party under § 420.101 or to terminate a provider agreement under § 489.53(a) (6), (7), or (8), it will send written notice of its decision to the affected party at least 15 days before the decision becomes effective.

(b) The notice will state (1) the reasons for the decision; (2) the effective date; (3) the extent of its applicability to participation in the Medicare program; (4) the earliest date on which the OIG will accept a request for reinstatement; (5) the requirements and procedures for reinstatement; and (6) the appeal rights available to the excluded party.

* * * * *

4c. Section 420.109 is revised to read as follows:

§ 420.109 Notice to others regarding exclusion or termination.

HHS will also give notice of exclusion or termination and the effective date to the public, to beneficiaries (in accordance with § 420.115(b)), and, as appropriate, to:

(a) State Medicaid and title V agencies, State Medicaid Fraud Control Units, and PROs.

(b) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations (HMOs);

(c) Medical societies and other professional organizations;

(d) Contractors, health care prepayment plans and other affected agencies and organizations; and

(e) The State or local authority responsible for licensing or certifying the excluded party.

4d. Section 420.114(b) is revised to read as follows:

§ 420.114 Duration of exclusion.

* * * * *

(b) The exclusion notice will specify the earliest date on which the excluded party may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses;

(2) The nature and extent of any adverse impact the violations have had on beneficiaries;

(3) The amount of any damages incurred by the Medicare program;

(4) Whether there are any mitigating circumstances;

(5) Any other facts bearing on the nature and seriousness of the violations or related offenses; and

(6) The previous sanction record of the excluded party under the Medicare or Medicaid program.

* * * * *

4e. Section 420.115 is revised to read as follows:

§ 420.115 Effect of exclusion.

(a) *Denial of payments during exclusion.* (1) Except as provided in paragraph (c) of this section, payment will not be made to an excluded practitioner, provider, or other supplier of services (that has accepted assignment of beneficiary claims), for items or services furnished on or after the effective date of exclusion specified in the exclusion notice.

(2) An assignment of a beneficiary's claim that is made on or after the effective date of exclusion will not be valid.

(b) *Denial of payment to beneficiaries.* If a beneficiary submits claims for items or services furnished by an excluded practitioner, provider, or other supplier of services after the effective date of the exclusion:

(1) HCFA will pay the first claim submitted by the beneficiary and immediately given notice of the exclusion.

(2) HCFA will not pay the beneficiary for items or services furnished by an excluded party more than 15 days after the date on the notice to the beneficiary or after the effective date of the exclusion, whichever is later.

(c) *Exceptions.* Payment is available for up to 30 days after the effective date of exclusion for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care services furnished to a beneficiary who was admitted before the effective date of exclusion; and

(2) Home health services and hospice care furnished under a plan established before the effective date of exclusion.

4f. Sections 420.122 and 420.123(a) are revised to read as follows:

Suspensions on Basis of Conviction of Program-Related Crime

§ 420.122 Bases for suspension for conviction of program-related crime and individuals affected.

(a) The OIG will suspend from participation in Medicare any party specified in paragraph (b) of this section who is convicted on or after October 25, 1977, of a criminal offense related to—

(1) Participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program; or

(2) Participation in the performance of management or administrative services relating to delivery of medical care or services under the Medicare, Medicaid, or the social services program.

(b) The suspension from participation in Medicare for conviction of a program-related crime, specified in paragraph (a) of this section, will apply to—

(1) Practitioners;

(2) Suppliers that are wholly owned by a convicted individual;

(3) Individuals who are employees, administrators, or operators of providers; and

(4) Any other individuals who, in any capacity, are receiving payment for providing services under Medicare, Medicaid, or the social services programs.

(c) The OIG will also require the State Medicaid agency to suspend any convicted party specified in paragraph (a) and (b) of this section whether or not that party is eligible to participate in the Medicare program.

§ 420.123 Notice to affected party of suspension for conviction of program-related crime.

(a) Whenever the OIG has conclusive information that a practitioner or other individual has been convicted of a crime related to his or her participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program, it will give the

party written notice that he or she is suspended from participation in Medicare beginning 15 days from the date on the notice. In the case of a party who is not eligible to participate in Medicare, HHS will provide written notice to the affected party that the State Medicaid agency will be required to suspend the party from Medicaid participation.

* * * * *

4g. Section 420.124 is revised to read as follows:

§ 420.124 Notice to others regarding suspension for conviction of program-related crime.

(a) HHS will also notify the following groups of the suspension concurrently with its notification to the suspended party:

(1) Any provider or supplier in which the suspended party is known to be serving as an employee, administrator, operator, or in which the party is serving in any other capacity and is receiving payment for providing services. The purpose of the notice is to inform the provider or supplier that Medicare payment will be denied for any services performed by the suspended party on or after the effective date of the suspension. However, the lack of this notice will not affect HCFA's ability to deny payment for these services;

(2) The State Medicaid agencies, in order that they can promptly suspend the party from participation in the Medicaid program (see § 455.210 of the chapter);

(3) The State or local authority responsible for the licensing or certification of the suspended party;

(4) Beneficiaries (in accordance with § 420.115(b));

(5) The public; and

(6) As appropriate—

(i) Title V agencies, State Medicaid Fraud Control Units, and PROs;

(ii) Hospitals, skilled nursing facilities, home health agencies, and health maintenance organizations (HMOs);

(iii) Medical societies and other professional organizations; and

(iv) Contractors, health care prepayment plans, and other affected agencies and organizations.

(b) The notice to the licensing or certifying authority will be accompanied by a request that the authority:

(1) Make appropriate, investigations;

(2) Invoke any sanctions available under State law and the authority's policies; and

(3) Keep HCFA and the OIG fully and currently informed of any action it takes.

4h. Section 420.125 is amended by revising paragraph (b) to read as follows:

§ 420.125 Duration of suspension.

* * * * *

(b) The suspension notice will specify the earliest date on which the suspended individual may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses;

(2) The nature and extent of any adverse impact the violations have had on beneficiaries;

(3) The amount of the damages incurred by the Medicare, Medicaid, and the social services programs;

(4) Whether there are any mitigating circumstances;

(5) The length of the sentence imposed by the court;

(6) Any other facts bearing on the nature and seriousness of the program violations; and

(7) The previous sanction record of the suspended party under the Medicare or Medicaid program.

4i. Section 420.126 is amended by revising paragraph (e) to read as follows:

§ 420.126 Effect of suspension.

* * * * *

(e) *Exceptions.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the suspension.

5. In Subpart B, § 420.130 is revised to read as follows:

Reinstatement Procedures

§ 420.130 Timing and method of request for reinstatement.

(a) A practitioner, provider, or supplier of services excluded from participation for fraud and abuse under § 420.101 and a party suspended from participation for program-related crimes under § 420.122 may request reinstatement at any time after the date specified in the notice of exclusion or suspension by submitting to the OIG or authorizing the OIG to obtain:

(1) Statements from private health insurers, indicating whether there have been any questionable claims submitted during the period of exclusion or suspension;

(2) Statements from peer review bodies, probation officers, where appropriate, or professional associates, as required by the OIG, attesting to their belief, supported by facts, that the violations that led to exclusion or conviction will not be repeated; and

(3) A statement from the affected party setting forth the reasons why he should be reinstated.

6. In Subpart B, § 420.132 is amended by revising the introductory paragraph and designating it as paragraph (a), by redesignating existing paragraphs (a) and (b) as (1) and (2), and by adding a new paragraph (b) to read as follows:

§ 420.132 Criteria for action on request for reinstatement.

(a) *OIG criteria for action.* The OIG will not approve a request for reinstatement unless it is reasonably certain that the violations that led to exclusion or conviction will not be repeated. In making this determination, the OIG will consider, among other factors:

(1) Whether the applicant has been convicted in Federal, State or local court for activities related to his program participation; and

(2) Whether the State or local licensing authority has taken any adverse action against the party since the date of exclusion or suspension.

(b) *Additional criteria for providers requesting reinstatement.* When the OIG approves a request from a provider requesting reinstatement, such provider may not be reinstated until HHS finds that the provider has fulfilled or has made satisfactory arrangements to fulfill all of the statutory and regulatory responsibilities specified in its agreement.

7. In Subpart B, § 420.134 is revised to read as follows:

§ 420.134 Notice of action on request for reinstatement.

(a) *Notice of approval of request.* If the OIG approves the request for reinstatement, HHS will:

(1) Give written notice to the excluded or suspended party specifying the date when program participation may resume; and

(2) Given notice to the public and, as appropriate, to title V State agencies, State Medicaid agencies and Medicaid Fraud Control Units, hospitals, skilled nursing facilities, home health agencies, medical societies, other professional societies or associations, contractors, health care prepayment plans, health maintenance organizations (HMOs).

PROs, the State or local licensing or certifying authority, and other affected organizations.

(b) *Notice of denial of request.* (1) If the OIG does not approve the request for reinstatement, it will give written notice to the party.

(2) Within 30 days of the date on the notice, the excluded or suspended party may submit:

(i) Documentary evidence and written argument against the continued exclusion or suspension; or

(ii) A written request to present evidence or argument orally to an OIG official. (The decision to continue the exclusion or suspension is not an initial determination under the provisions of Part 405, Subpart O of this chapter.)

(c) *Action following consideration of additional evidence.* After evaluating any additional evidence submitted by the excluded or suspended party (or at the end of the 30 day period, if none is submitted), the OIG will send written notice:

(1) Confirming the denial, and indicating that a subsequent request for reinstatement will not be accepted until 6 months after the date of confirmation; or

(2) Approving reinstatement and specifying the date when program participation may be resumed. If the OIG approves reinstatement, HHS will notify the public and, as appropriate, the agencies and institutions as specified in paragraph (a)(2) of this section.

8. In Subpart B, § 420.136 is amended by revising paragraph (a) to read as follows:

§ 420.136 Reversed or vacated convictions of program related crime.

(a) The OIG will reinstate a suspended party whose conviction has been reversed or vacated.

* * * * *

PART 455—PROGRAM INTEGRITY

B. Part 455 is amended as set forth below:

1. The authority citations for Part 455 continues to read as follows:

Authority. Secs. 1102, 1124, 1126, 1128, 1902(a)(4)(A), 1902(a)(30), 1902(a)(36), 1902(a)(39), 1903(a)(6), 1903(b)(3), 1903(i)(2), 1903(n), 1903(q), and 1909 of the Social Security Act; 42 U.S.C. 1302, 1302a–3, 1302a–5, 1302a–7, 1396a(a)(4)(A), 1396a(a)(30), 1396a(a)(36), 1396a(a)(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) 1396b(n), 1396b(q), and 1396h.

2. Section 455.2 is amended to add definitions, in alphabetical order, for "Furnished" and "PRO", to read as follows:

§ 455.2 Definitions.

* * * * *

"Furnished" refers to items and services provided directly by, or under the direct supervision of, or ordered by, a practitioner or other individual (either as an employee or in his or her own capacity), a provider, or other supplier of services. (For purposes of denial of reimbursement within this Part, it does not refer to services ordered by one party but billed for and provided by or under the supervision of another.)

* * * * *

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248.

* * * * *

Subpart C—Exclusion of Providers and Suspension of Practitioners

3. In Subpart C, § 455.206(c) is revised to read as follows:

§ 455.206 Notice of exclusion for fraud and abuse.

* * * * *

(c) The agency must also give notice of the exclusion and the effective date to the OIG, HCFA, the public, and, as appropriate, to—

(1) Recipients;

(2) PROs;

(3) Providers and organizations;

(4) Medical societies and other professional organizations;

(5) State licensing boards and affected State and local agencies and organizations; and

(6) Medicare carriers and intermediaries.

4. In Subpart C, § 455.208, paragraph (c) is revised to read as follows:

§ 455.208 Denial of FFP; Parties excluded or terminated under Medicare for fraud and abuse.

* * * * *

(c) *Exception: FFP available in payment made during exclusion or after termination.* Payment is available for up to 30 days after the effective date of the exclusion or termination for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of the exclusion or termination; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the exclusion or termination.

* * * * *

5. In Subpart C, § 455.210 is revised to read as follows:

§ 455.210 Bases for suspension for conviction of program-related crimes.

The agency must suspend from the Medicaid program any party who has been suspended from participation in Medicare under § 420.122 of this chapter for conviction of a program-related crime. The agency must also suspend any convicted party who is not eligible to participate in Medicare whenever HHS directs such action.

6. In Subpart C, § 455.211, paragraph (a) is revised to read as follows:

§ 455.211 Duration of suspension.

(a) The suspension under Medicaid must be effective on the date established by the OIG for suspension under Medicare, and must be for the same period as the Medicare suspension. In the case of a convicted party who is not eligible to participate in Medicare, the suspension will be effective on the date and for the period established by the OIG.

* * * * *

7. In Subpart C, § 455.212, paragraph (a) is revised to read as follows:

§ 455.212 Notification of State or local convictions of crimes against Medicaid.

(a) The agency must notify the OIG whenever a State or local court has entered a judgment of conviction against an individual who is receiving reimbursement under Medicaid, for a criminal offense related to participation in the delivery of medical care or services under the Medicaid program.

* * * * *

8. In Subpart C, § 455.213, paragraph (b) is revised to read as follows:

§ 455.213 Effect of suspension.

* * * * *

(b) *Circumstances under which payment may be made after a suspension.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the suspension.

9. In Subpart C, § 455.214 is revised to read as follows:

§ 455.214 Waiver of suspension of parties.

(a) *Request.* The agency may request the OIG to waive suspension of a party under § 455.210 if it concludes that, because of the shortage of providers or

other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied adequate access to medical care.

(b) *Notice of waiver of suspension.* The OIG will notify the agency if and when it waives suspension in response to the agency's request.

10. In Subpart C, § 455.230 is revised to read as follows:

Reinstatement Procedures

§ 455.230 Reinstatement of parties suspended under Medicare.

(a) The agency may not reinstate in the Medicaid program a party that has been suspended from Medicare or suspended at the direction of HHS until HHS notifies the agency that the party may be reinstated.

(b) If HHS notifies the agency that it has reinstated a party under Medicare, the agency must automatically reinstate the party under Medicaid effective on the date of reinstatement under Medicare, unless a longer period of suspension was established in accordance with the State's own authorities and procedures.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

C. Part 489 is amended as set forth below:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. In Subpart E, § 489.53 is amended by revising the title, introductory paragraph (a) and paragraphs (a)(5) and (8), as well as by revising paragraphs (b)(1) and (2) and (c), to read as follows:

§ 489.53 Termination by HHS.

(a) *Cause for termination.* HHS may terminate an agreement if it determines that any of the failings listed in this paragraph (a) is attributable to the provider.

* * * * *

(5) It refuses to permit examination of its fiscal or other records by, or on behalf of HHS, as necessary for verification of information furnished as a basis for payment under Medicare.

* * * * *

(8) It has furnished items or services which the OIG has determined to be substantially in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care. (See § 420.101 of this chapter.) HHS will not terminate a provider agreement under this clause if it has waived a disallowance with respect to the services in question on the grounds that the provider and the beneficiary could not reasonably be expected to know that payment would not be made. (*See* section 1879(a) of the Act (42 U.S.C. 1395pp(a))).

* * * * *

(b) *Notice of termination.* (1) HHS will give the provider notice of termination at least 15 days before the effective date of termination of the agreement.

(2) HHS will concurrently give notice of termination to the public.

* * * * *

(c) *Appeal by the provider.* A provider may appeal a termination of its agreement by HHS, in accordance with Subpart O of Part 405 of this chapter. The termination of a provider agreement on grounds specified in paragraph (a)(6), (a)(7), or (a)(8) of this section is subject to the additional procedures specified in §§ 420.105 through 420.109 of this chapter.

3. In Subpart E, § 489.55 is revised to read as follows:

§ 489.55 Exceptions to effective date of termination.

Payment is available for up to 30 days after the effective date of termination for—

(a) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of termination; and

(b) Home health services and hospice care furnished under a plan established before the effective date of termination.[1]

4. In Subpart E, § 489.57 is revised to read as follows:

§ 489.57 Reinstatement after termination.

When an agreement has been terminated in accordance with the provisions of this subpart, HHS will not accept a new agreement from that provider unless the following conditions are met.

(a) HHS finds that the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur.

(b) HHS finds that the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

[1] For termination before July 18, 1984 payment was available through the calendar year in which the termination was effective.

TITLE 45—PUBLIC WELFARE

PART 101—CIVIL MONEY PENALTIES AND ASSESSMENTS

II. 45 CFR Subtitle A, Part 101 is amended as set forth below:

1. The authority citations for Part 101 continues to read as follows:

Authority: Secs. 1102, 1128, and 1128A of the Social Security Act (42 U.S.C. 1302, 1320a–7 and 42 U.S.C. 1320a–7a).

2. In § 101.100, paragraph (a) is revised to read as follows:

§ 101.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c) and 1128A of the Social Security Act (42 U.S.C. 1370a–7(c) and 1320a–7a).

* * * * *

3. In § 101.106, paragraphs (c) (1) and (2) are revised to read as follows:

§ 101.106 Determinations regarding the amount of the penalty and assessment.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed, for every item or service subject to a determination under § 101.102:

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by § 101.103 and § 101.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by § 101.103 and § 101.104, to reflect that fact.

* * * * *

4. In § 101.115, paragraph (b)(5) is revised to read as follows:

§ 101.115 Authority of ALJ.

* * * * *

(b) The ALJ shall have the authority to:

* * * * *

(5) Issue subpoenas in hearings involving Medicare and Medicaid claims.

5. In § 101.116, paragraph (b)(2) is revised to read as follows:

§ 101.116 Rights of parties.

* * * * *

(b) * * *

(2)(i) In all hearings, it shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at

the time and place, and on the date set forth in a notice to appear as witness, if that party has control over such person.

(ii) In hearings involving Medicare and Medicaid claims, a notice to appear as witness may be accompanied by an administrative subpoena. A party who desires the issuance of a subpoena shall, not less than 15 days prior to the time fixed for a hearing, file with the ALJ a written request therefor, designating the witness(es) or document(s) to be produced and describing the address and location thereof with sufficient particularity to permit such witness(es) or document(s) to be found. A subpoena issued under this section shall be in the name of the Secretary. The party requesting the subpoena shall pay the cost of service and the fees and the mileage of any witnesses so subpoenaed, as provided in 28 U.S.C. 1821. Subpoenas shall be served by the party requesting issuance in the manner provided in § 205(d) of the Act. A check for witness fees and mileage shall accompany the subpoena when served. When a subpoena is issued on behalf of the Inspector General, a check for witness fees and mileage need not accompany the subpoena when served.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; and No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: May 3, 1985.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-21877 Filed 9-12-85; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50943-5043]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule; technical revocation.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this final rule to remove expired material from its regulations governing the taking and importing of marine mammals. In 1977, the NMFS published expedited procedures governing formal hearings in order to consider in a timely manner, the merits of issuing a general permit to the American Tunaboat Association and to render a decision on or before January 1, 1978. These procedural regulations expired at the conclusion of that hearing process and are no longer valid.

EFFECTIVE DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: T. J. McIntyre, (Marine Resources Management Specialist, Office of Protected Species & Habitat Conservation, NMFS), 202/634-7529.

SUPPLEMENTARY INFORMATION: On July 13, 1977 (42 FR 35967), the NMFS published expedited procedures governing conduct during formal hearings held under section 103(d) of the Marine Mammal Protection Act. These expedited procedures were necessary to assure a decision on the issuance of a general permit and certificates of inclusion to the American Tunaboat Association by January 1, 1978. These procedural regulations terminated on December 23, 1977, the date of publication of the Director's final decision on the matter (42 FR 64548). This rule serves to remove this expired material from Chapter 50 of the Code of Federal Regulations, Part 216.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 9, 1985.

Carmen J. Blondin,

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

PART 216—[AMENDED]

1. The authority citation for 50 CFR Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise stated.

PART 216—APPENDIX [REMOVED]

2. 50 CFR Part 216—Appendix is hereby revoked and removed.

[FR Doc. 85-22026 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Revised Requirements for Delayed Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking would amend the regulation for delayed delivery of cotton on cotton futures contracts. The amendment would simplify the procedure and facilitate the more orderly and efficient delivery of cotton for delayed delivery on futures contracts.

DATE: Comments must be submitted on or before October 15, 1985.

ADDRESS: Written comments may be sent to Loyd R. Frazier, Chief, Marketing Service Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, (202) 447–2147.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the order. William T. Manley, Deputy Administrator, AMS has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made to the present regulations would merely simplify the procedure for delayed delivery on cotton futures contracts and would result in reduced paperwork for all size entities. No new costs or additional requirements are being imposed on the affected industry or others.

Background

The U.S. Cotton Futures Act (90 Stat. 1841–46; 7 U.S.C. 15b; the "Act") requires that cotton delivered under futures contracts shall be in accordance with the classification as assigned pursuant to regulations of the Secretary of Agriculture (7 CFR Part 27) by such officer or officers of the Government designated for such purpose.

Under the Act, all cotton delivered under a futures contract is required to have, on the date fixed for delivery, USDA classification certificates covering the cotton involved in the transaction. The certificates are issued by the Cotton Division of AMS and show the results of the classification of the cotton as to grade, length of staple, and micronaire determination (7 CFR 27.39).

There is a procedure allowing for delayed certification when cotton classification certificates have not been issued by delivery day (7 CFR 27.52–56). In such instances, the regulations require that the tenderer give notice of delayed certification to the receiver of the cotton as well as the Marketing Services Office, Cotton Division, have the cotton duly inspected and sampled by an exchange inspection agency and have the samples delivered to the Cotton Division not later than the date of issuance of the transferable notice of delivery of cotton subject to a cotton futures contract. These requirements would not change under the proposed amendment.

Proposed Amendment

The present regulation that would be amended (7 CFR 27.55) requires that, in lieu of cotton class certificates on delivery day, the tenderer must present to the Area Director, Cotton Division a written notice identifying each bale and stating its grade to the best of the tenderer's knowledge and belief. This written notice is otherwise known as the "deliverer's class". This notice is then validated by a Cotton Division representative indicating that written notice of delayed delivery has been made and samples were received by the Marketing Services Office prior to the date of giving the transferable notice of delivery to the receiver of the cotton. The tenderer must deliver the written notice to the receiver of the cotton along with the warehouse receipt for each bale. Presently, prior to issuing cotton class certificates, the warehouse receipts must be returned to the Marketing Services Office for appropriate processing and then, in turn, returned to the receiver.

The Cotton Division, in consultation with the New York Cotton Exchange, has determined that this procedure could be simplified by eliminating the written notice by the Area Director, Cotton Division. Instead the tenderer would present to the receiver a receipt issued by an exchange inspection agency which inspects and samples cotton that is pending certification. This receipt would certify that the warehouse receipts have been received by the exchange inspection agency that they represent cotton weighed and sampled in an approved warehouse and that the warehouse receipts are in custody of the Cotton Division. It is the exchange inspection agency's receipt that could be delivered to the receiver of the cotton on delivery day in lieu of cotton class certificates and the warehouse receipts. The new procedure would eliminate the need for a deliverer's class and, the need for repetitive procedure. It will also eliminate the requirement of the receiver having to return warehouse receipts to the Cotton Division for certification when the classing is completed as they will remain in USDA custody.

The Department proposes to make this change by completely revising § 27.55 of the cotton futures regulations. In addition, § 27.56 which describes certain obligations of the person making the tender in regard to timely delivery of class certificates to the receiver after issuance would be removed since the requirements provided therein would be revised and incorporated into the proposed § 27.55. References to delivery of cotton class certificates by a specified hour would be deleted in favor of language which would require that tenderer furnish the cotton class certificates upon issuance by the Marketing Services Office.

Changes in §§ 27.47 and 27.52, of the regulations are being proposed to delete references to § 27.56, which would be removed under this proposal.

List of Subjects in 7 CFR Part 27

Classification, Cotton, Micronaire, Samples, Spot markets.

Accordingly, it is proposed to amend the regulations of 7 CFR Part 27 governing cotton classification under

cotton futures legislation as shown. The Table of Contents would be amended accordingly.

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

§§ 27.47 and 27.52 [Amended]

2. In §§ 27.47 and 27.52 it is proposed to remove all references to "27.56" an replace it with "27.55".

3. Section 27.55 would be amended by revising it to read as follows:

§ 27.55 Requirements in lieu of cotton class certificates on delivery day.

If on the morning of the delivery day specified in the transferable notice the cotton class certificates covering the cotton involved are not ready for delivery when called for, the tenderer of the cotton shall present to the receiver a receipt issued by an exchange inspection agency certifying that warehouse receipts, listed by lot numbers, representing cotton weighed and sampled in an approved warehouse under the supervision of such agency, have been received by the exchange inspection agency and are in the custody of the Cotton Division Marketing Services Office where certification requests are required to be filed. The requirements of §§ 27.52–27.55 shall be complied with prior to delivery by the tenderer of the agency's receipt to the receiver. Upon issuance by Marketing Services Office, the tenderer shall furnish to the receiver the cotton class certificates complying with the regulations in this subpart, showing the cotton to be tenderable on a basis grade contract.

§ 27.56 [Removed]

4. Section 27.56 would be removed.

Dated: September 9, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–21907 Filed 9–12–85; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 51

U.S. Standards for Grades of Kiwifruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would amend the voluntary United States Standards for Grades of Kiwifruit. The Kiwifruit Growers of California have requested that the grade standards be amended by changing the shape requirement for the U.S. Fancy grade, the application of tolerances section, revising the requirements of the definition of fairly uniform in size, and adding a section establishing the sample size used for grade determination. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

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

ADDRESS: Interested persons are invited to submit written comments concerning the proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Francis J. O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 475–3125.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The voluntary United States Standards for Grades of Kiwifruit became effective September 1982. Recently the Kiwifruit Growers of California requested that the standards be amended to change the shape requirement in the U.S. Fancy grade and the application of tolerances, to redefine fairly uniform in size and to add a section for sample size.

The U.S. Fancy grade requires fruit to be well formed. Due to varying degrees of shape encountered over the years, it is felt that well formed is too restrictive. This proposal would allow U.S. Fancy or U.S. No. 1 to be fairly well formed.

Recent changes in marketing practices include packing kiwifruit in consumer size containers. The present application of tolerances section applies to individual containers but does not make a distinction for consumer containers. This proposal would bring the application of tolerances in line with current industry practices.

A provision would be added to the application of tolerances permitting one fruit which is frozen or affected by decay in any consumer container, provided that the average percentage of defects for the entire lot not exceed lot tolerances. Present application of tolerances allows two such fruit in any container provided the average for the entire lot does not exceed the tolerance.

The present standards define "fairly uniform size" to mean that fruit in any container may not vary more than ¼ inch in diameter. Industry has pointed out that limiting diameter variation to only ¼ inch for large size fruit is too restrictive. Therefore, this proposal incorporates a sliding scale approach to the problem by allowing a greater variation in diameter for larger fruit than for fruit of smaller size. For fruit in containers numerically marked to denote size, fairly uniform in size would allow a variation of not more than ½ inch in sizes 30 or larger, ⅜ inch in sizes 31 thru 38, and ¼ inch in sizes 39 and smaller. A tolerance of 5 percent would be provided for fruit in any container which exceeds the diameter range specified.

A section would also be added concerning sample size. Industry in the last few years has added other types of containers to their standard tray flat. This section would address sampling for new and old types of containers.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

It is proposed that CFR Part 51 be amended as follows:

1. The authority citation for CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended, 7 U.S.C. 1622, 1624.

2. *In Subpart—United States Standards for Grades of Kiwifruit*, the

table of contents thereof would be revised to read as follows:

Subpart—United States Standards for Grades of Kiwifruit

Sec.
51.2335 Grades.
51.2336 Tolerances.
51.2337 Application of tolerances.
51.2338 Standard pack.
51.2339 Definitions.
51.2340 Classification of defects.
51.2341 Sample size for grade determination.

§ 51.2335 [Amended]

3. Section 51.2335 paragraph (a)(1)(vi) would be revised to read as follows:

* * * * *

(a) * * *
(1) * * *
(vi) Fairly well formed.

* * * * *

§ 51.2337 [Amended]

4. Section 51.2337 paragraph (a) would be revised to read as follows:

* * * * *

(a) Individual samples shall not have more than double a specified tolerance except that at least two defective specimens may be permitted in any container: *Provided,* that not more than one fruit which is frozen or affected by decay be permitted in any container 3 pounds or less; and, *Provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

* * * * *

§ 51.2338 [Amended]

5. Section 51.2338 paragraph (d) would be revised to read as follows:

* * * * *

(d) "Fairly uniform in size" means that fruit in containers marked numerically to denote size may not vary in diameter more than ½ inch (12.7mm) in sizes 30 or larger; ⅜ inch (9.5mm) in sizes 31 through 38; and ¼ inch (6.4mm) in sizes 39 or smaller. Not more than 5 percent, by count, of the fruit in any container may exceed the diameter range specified.

* * * * *

§ 51.2339 [Amended]

6. Section 51.2339 would be amended by removing the definition for "Well formed."

7. 7 CFR Part 51 would be amended by adding a new section reading as follows:

§ 51.2341 Sample size for grade determination.

For fruit place-packed in tray pack containers, the sample shall consist of the contents of the individual container. For fruit jumble-packed in volume-filled containers, the sample shall consist of at least 50 fruit. When individual containers contain at least 50 fruit, each individual sample is drawn from one container. When individual containers contain less than 50 fruit, a sufficient number of adjoining containers are opened to form a 50-fruit sample.

Done in Washington, D.C. on September 9, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-21908 Filed 9-12-85; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Report of Crime or Catastrophic Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is a revision of § 748.1 (b) and (c) of the NCUA Rules and Regulations, requiring that all federally insured credit unions prepare, complete and, within 7 business days, report suspected criminal activity on NCUA Form 2362 (Criminal Referral Form—Long Form) or NCUA Form 2363 (Criminal Referral Form—Short Form) to the NCUA regional director, the U.S. Attorney, and the Federal Bureau of Investigation. In general, the long form is to be used to report suspected criminal activity involving probable loss of $10,000 or greater, whereas the short form is to be used to report suspected criminal activity involving actual or probable loss of less than $10,000. This revised rule results in support of and cooperation with the U.S. Department of Justice's effort, along with that of other financial insitution regulators to implement a criminal referral program to improve the detection, the investigation, and the prosecution of fraud in financial institutions.

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

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Wilmer A. Theard, Director, Division of Examination, Telephone Number (202) 357-1065.

SUPPLEMENTARY INFORMATION: This revised rule results in support of and cooperation with the U.S. Department of Justice's effort, along with that of other financial institution regulators to implement a criminal referral program to improve the detection, the investigation, and prosecution of fraud in financial institutions. In 1984, there have been an unprecedented number of financial institution failures which may be attributed largely to criminal misconduct by insiders. The rule is revised only to the extend of segregating the reporting of crimes and catastrophies, with no changes resulting for the reporting of the latter but requiring the use of NCUA Forms 2362 and 2363 for the reporting of suspected criminal activity.

Due to the reporting required by the Department of Justice and the FBI, the content of the forms follows closely the uniform standard questions required from all financial institutions. However, terms common to credit union operations have been used wherever possible.

Request For Comments

The NCUA Board requests public comments concerning the guidance it believes will be necessary to implement this program and on any other issues relating to criminal reporting by federally insured credit unions.

Regulatory Procedures

The NCUA Board hereby certifies that this rule will not have a significant economic impact on credit unions. As indicated by the FBI's 1984 statistics, only 172 violations were reported and investigated in federally insured credit unions.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule (NCUA Forms 2362 and 2363) have been submitted to and approved by the Office of Management and Budget.

List of Subjects in 12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration on the 5th day of September 1985.

Rosemary Brady,

Secretary of the NCUA Board.

It is proposed to revised 12 CFR Part 748 to read as follows:

PART 748—REPORT OF CRIME OR CATASTROPHIC ACT

Sec.
748.0 Security program.
748.1 Filing of reports.

Authority: 12 U.S.C. 1785.

§ 748.0 Security program.

(a) Each federally insured credit union will develop a written security program within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries, and larcenies; to prevent destruction of vital records as defined in the *Accounting Manual for Federal Credit Unions;* and to assist in the identification of persons who commit or attempt such crimes.

§ 748.1 Filing of reports.

(a) *Compliance Report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this Part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority, if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *Catastrophic Act Report.* Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). Within a reasonable time after the catastrophic act occurs, the credit union shall ensure that a record of the incident is prepared and filed at its main office. In the preparation of such record, the credit union should include information sufficient to indicate the office where the catastrophic act occurred; when it took place; the amount of the loss, if any; whether any operational or mechanical deficiency(ies) might have contributed to the catastrophic act; and what has been done or is planned to be done to correct the deficiency(ies).

(c) *Criminal Referral Form.* Each federally insured credit union will notify the NCUA regional director, the U.S. Attorney, and the FBI within 7 business days of any crime that occurs at its office(s), utilizing NCUA form 2362 for suspected criminal activity involving probable loss of $10,000 or greater or NCUA form 2363 for suspected criminal activity involving actual or probable loss of less than $10,000.

[FR Doc. 85-21792 Filed 9-12-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Proposal To Revoke GRAS Status for Use of Fruits and Vegetables Intended To Be Served or Sold Raw to Consumers

Correction

In FR Doc. 85-19282 beginning on page 32830 in the issue of Wednesday, August 14, 1985, on page 32833, second column, eighth line, remove the word "are" at the end of the line.

BILLING CODE 1505-01-M

21 CFR Part 314

[Docket No. 84N-0101]

New Drug and Antibiotic Application Review; Proposed User Charge

Correction

In FR Doc. 85-18657 beginning on page 31726 in the issue of Tuesday, August 6, 1985, make the following corrections:

1. On page 31726, second column, in the twelfth line, "20847" should read "20857".

2. On the same page, third column, in the thid paragraph, the thirteenth line, "OIAA" should read "IOAA".

3. On page 31728, third column, second complete paragraph, third line from the bottom, "F.d" should read "F.2d".

§ 314.50 [Corrected]

4. On page 31731, third column, in § 314.50(i), fifth line, "195" should read "1985".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-110-80]

Income of Foreign Governments; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to income of a foreign government from loans and real property subject to net leases under section 892 that appeared in the **Federal Register** on July 22, 1980 (45 FR 48921). The proposed amendments are being withdrawn for further consideration of the subject matter.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC: LR:T (LR-110-80), 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking under section 892 that appeared in the **Federal Register** on July 22, 1980 (45 FR 48921). The notice proposed regulations on income of foreign governments under two provisions that were reserved under paragraph (c)(2)(i) of § 1.892-1 when final regulations under section 892 of the Internal Revenue Code of 1954 were published in the **Federal Register** on July 22, 1980 (45 FR 48882). The proposed amendments to paragraph (c)(2) (i) of § 1.892-1, if adopted, would have established the circumstance under which the making of loans or holding of net leases on real property would have been considered to be investment activities. Foreign governments are exempt from United States income tax on income from investment activities. The proposed amendments are being withdrawn for further consideration of the subject matter. In that regard a study project is being established. Pending the conclusion of the study project and the later issuance of regulations, the two provisions that were reserved under paragraph (c)(2) (i) of § 1.892-1 shall remain reserved.

Drafting Information

The principle author of this document is Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 1, relating to income of a foreign government from loans and real property subject to net leases under section 892 and published in the Federal

Register on July 22, 1980 (45 FR 48921), are hereby withdrawn.

Ro---oe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-21985 Filed 9-12-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

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

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to: Inspector authority to write Orders for Cessation and Immediate Compliance; hearing officer's discretion to deny intervention to certain parties; alternative enforcement actions; and, the definition of "substantial legal and financial commitments".

Except for the amendment pertaining to alternative enforcement, these amendments respond to a Judgment and Order issued on August 20, 1985, by the United States District Court for the Eastern District of Kentucky at Frankfort, in the case entitled *Sierra Club, Cumberland Chapter, et al, vs. James G. Watt, et al.*

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before October 15, 1985, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 8, 1985 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W. H. Tipton, Direcort, Lexington Field Office, Office of Surface Mining, 340 Legion Dirve, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Maining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under "ADDRESSES."

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather then a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendments

On August 29, 1985, Kentucky submitted program amendments to modify requirements pertaining to: inspector authority to write Orders for

Cessation and Immediate Compliance; the hearing officer's discretion to deny intervention where the petitioner's interest is adequately represented by existing parties; alternative enforcement actions to be taken under certain circumstances; and the definition of "substantial legal and financial commitment."

Except for changes pertaining to alternative enforcement actions, the amendments respond to three requirements in the Judgment and Order issued August 20, 1985, in the case entitled *Sierra Club, Cumberland Chapter, et al,* vs. *James G. Watt, et al* (E.D. Ky., 1985).

Briefly, the proposed modifications and citations are:

1. Kentucky proposed to modify the language in paragraph D of Section II of its state program plan entitled "Field Enforcement Procedures." The modification would delete the qualifications applied to inspectors empowered to issue Orders for Cessation and Immediate Compliance, and would grant authority to all inspectors and other qualified field personnel to issue such orders.

2. Kentucky proposes to amend 405 KAR 7:090, section 12(3) to delete the introductory clause "unless the petitioner's interest is adequately represented by existing parties," so that the section would require the hearing officer to grant intervention where the petitioner had a statutory right to initiate the proceeding in which he wishes to intervene or has an interest which is or may be adversely affected by the outcome of proceeding.

3. Kentucky proposes to modify 405 KAR 7:090 section 11(2)(a) to include four alternative enforcement actions to be taken when a permittee's failure to abate a violation extends more than 30 days beyond the abatement period in the notice or order.

4. Minor editorial changes are proposed in 405 KAR 7:090.

5. Kentucky proposes to modify the definition in 405 KAR 24:030 Section 2(2) of "substantial legal and finanical commitments" to require the existence of a long term coal contract. Kentucky proposes further modification to Section 2(2) to clarify requirements and "to more fully reflect the current federal definition at 30 CFR 762.5, and to comply with the Secretary of the Interior's interpretation regarding 'existing mines' as discussed in the July 15, 1985 Memorandum Opinion in Flannery Round III."

Therefore, the Director, OSM is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 917

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

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85-21914 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is seeking comment on Missouri's request to further extend the deadline for Missour to promulgate and submit rules governing the training, examination and certification of blasters. On August 6, 1984, Missouri requested for a one-year extension to develop and adopt a blaster certification program. On October 26, 1984, OSM granted Missouri a one-year extension to August 6, 1985. On August 4, 1985, Missouri requested another one-year extension for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by October 15, 1985, at the address below will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to Mr. Charles E. Sandberg, Field Office Director, Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Sandberg, Field Office Director, Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Supplementary Information:

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority of each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of the Missouri program, the applicable is 12 months after publication date of OSM's rule, or March 4, 1984.

On August 6, 1984, Missouri advised OSM that it would be unable to meet the August 6, 1984, deadline and requested an extension to develop and adopt a blaster certification program. On October 26, 1984, OSM granted Missouri

an extension to August 6, 1985 (49 FR 43055).

On August 4, 1985, the Director of the Missouri Land Reclamation Commission advised OSM that the State would require another extension of time to submit its blaster training and examination program (Administrative Record MO–282). He stated the reason for the extension is to provide the necessary time for: (1) Contract negotiations with consultants to establish certification procedures and a test; (2) preparation of appropriate procedures and test; (3) incorporation of the certification procedures and test format in the Missouri Code of Regulations, and (4) gaining approval of the State program amendment.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 925

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

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85–21913 Filed 9–12–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–85–40]

Drawbridge Operations Regulations; Atlantic Intracoastal Waterways, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Flordia Department of Transportation the Coast Guard is considering a change to the regulations governing the Port Orange and Coronado Beach Bridges by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SE. 1st Avenue, Miami, Flordia 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all comunications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The Coronado Beach bridge now opens on signal at all times. The Port Orange bridge does likewise except between 7:30 a.m. and 8:30 a.m. and between 4:30 p.m. and 5:30 p.m., Monday through Saturday, when the bridge need open only at 30 minute intervals. This proposal would revise the existing Port Orange regulations by making them effective Monday through Friday only and establish seasonal weekend regulations for both bridges.

The proposed new weekend regulations would be effective between March 15 and October 15 annually and would apply between 10 a.m. and 6 p.m., Saturdays, Sundays, and federal holidays. During these periods the Port Orange bridge would be authorized to open only at 20 minute intervals and the Coronado Beach bridge at 15 minute intervals. These timed openings should virtually eliminate back-to-back (multiple) draw openings which are a major factor in vehicular traffic congestion. The 15 and 20 minute intervals selected correspond to existing vessel traffic patterns and, for the Coronado Beach bridge, take into account the existing timed openings at the nearby Harris Saxon bridge.

The Coast Guard recently (50 FR 27026) proposed a revision to 33 CFR 117.261 which would authorize "on demand" draw openings for certain large vessels, delete weather related exemptions at certain bridges, and incorporate minor editorial changes. Since the revised format of this recent proposal is continued in today's proposal, paragraph designations do not coincide with those now in the Code of Federal Regulations.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this becasue the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, 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 and 33 CFR 1.05–1(g).

2. In § 117.261 paragraphs (g) and (h) are proposed to be revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami

* * * * *

(g) *SR AIA bridge, mile 835.5 at Port Orange.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. From March 15 through October 15 from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays the draw need only open on the hour, 20 minutes past the hour and 40 minutes past the hour.

(h) *Coronado Beach bridge, mile 845 at New Smyrna Beach.* The draw shall open on signal; except that, from March 15 through October 15 from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: August 28, 1985.

R.P. Cueroni,

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

[FR Doc. 85-21833 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-4 FRL-2898-6]

South Carolina; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination of Application of South Carolina for Final Authorization, Comment Period and Availability of Public Hearing.

SUMMARY: In July 1984, the State of South Carolina applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA reviewed South Carolina's application and made a tentative decision on October 25, 1984, that South Carolina's hazardous waste program satisfied all of the requirements necessary to qualify for final authorization (49 FR 42959). On June 5, 1985, the South Carolina hazardous waste law was amended to establish increased fees for disposal of hazardous waste generated outside the State.

This notice solicits public comment on whether the higher fees for disposal of hazardous wastes generated outside the State unreasonably restrict, impede, or operate as a ban on the free movement of hazardous wastes. Information available to EPA does not indicate that the statutory change will unreasonably restrict or impede the movement of hazardous waste, and the Agency therefore is issuing a second tentative determination reaffirming its original decision to authorize the State program.

DATES: All written comments on South Carolina's amended law must be received by the close of business on October 15, 1985. A public hearing is scheduled for October 21, 1985. The Regional Administrator may cancel the public hearing if sufficient public interest is not expressed by October 18, 1985. If you wish to find out whether a public hearing will be held, write or telephone the contact person(s) listed below after October 18, 1985.

Otis Johnson, Chief, Waste Planning Section, Residuals Management Branch, Waste Management Division, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 881–3016; or

Mr. Robert E. Malpass, Chief, Bureau of Solid and Hazardous Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 758–5681

ADDRESSES: Written comments or indication of interest in EPA's holding a public hearing must be sent to Mr. Otis Johnson, EPA Region IV, Residuals Management Branch, 345 Courtland St. NE, Atlanta, GA 30365. EPA will hold a public hearing at 7:00 p.m., on October 21, 1985 at the Dennis Building, 1000 Assembly Street, Room 149, Columbia, South Carolina.

Copies of the amended law are available for inspection and copying during business hours 8:00 a.m. to 5:00 p.m. at EPA Region IV, or DHEC.

FOR FURTHER INFORMATION CONTACT: Patricia Herbert, EPA Region IV, Residuals Management Branch, 345 Courtland St. NE, Atlanta, Georgia 30365, phone: (404) 881–3016, FTS: 257–3016, or Robert E. Malpass, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, phone: (803) 758–5681.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the RCRA allows EPA to authorize a State hazardous waste program to operate in the State in lieu of the Federal hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Act Amendments of 1984 (Pub. L. 98–616, Nov. 8, 1984). Authorization is granted by EPA if the State's program meets the following criteria: (1) It is "equivalent" to the Federal program, (2) it is "consistent" with the Federal program and other State programs, and (3) it provides for adequate enforcement (Section 3006(b) 42 U.S.C. 6226(b)). The Agency's implementing regulations at Title 40 Code of Federal Regulations (40 CFR) §§ 271.5 and 271.20 establish procedures for reviewing a State's application.

Under 40 CFR 271.5(c), the review period including public participation shall begin again upon receipt of a revised submission which materially changes the State's application. Under § 271.20(d), the Regional Administrator must give notice of the State's submission and the Agency's evaluation of it in the **Federal Register** for the public to consider and comment on during a 30 day period. A public hearing may also be held if sufficient public interest is expressed. The Regional Administrator may announce in the

notice on the public comment period the date and place for the public hearing. The notice may specify that the Regional Administrator may cancel the public hearing if sufficient public interest in a hearing is not expressed.

B. South Carolina

South Carolina submitted an application for final authorization in July 1984. On October 25, 1985 (49 FR 42959) EPA made the tentative determination that South Carolina's hazardous waste program satisfied the requirements for final authorization. However, before EPA made a final decision, South Carolina amended its Hazardous Waste Management Act (1985 Act No. 436, June 5, 1985).

South Carolina imposes a higher fee on land disposal of hazardous waste generated outside the State than it imposes on waste generated inside the State. The Act amended section 44–56–170 to raise the fee for land disposal of wastes generated within the State from $5.00 to $13.00 per ton. For land disposal of wastes generated outside the State, the fee was raised from $7.50 per ton to either $18.00 per ton or to the fee amount that would be charged for land disposal of wastes by the State in which the wastes were generated, whichever is higher.

The question which must be settled before EPA grants final authorization is whether the South Carolina fee schedule renders the State program inconsistent with the Federal program and other State programs. Under § 271.4(a) a State program is deemed inconsistent if it "... unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous waste from or to other States for treatment, storage or disposal at facilities authorized to operate under the Federal or an approved State program . . . ."

EPA believes that higher fees for out-of-State wastes should not be encouraged. We are concerned that such fees may discourage wastes from going to the most appropriate facility. However, we do not believe that South Carolina's fee schedule violates § 271.4(a). The State has informed EPA that the fee imposed constitutes a "relatively small percentage" of the actual cost of disposal and would not unreasonably restrict or impede movement of hazardous waste. EPA has no evidence to suggest that South Carolina's new fees will unreasonably restrict, impede, or operate as a ban on the transportation of hazardous waste into the State.

Unless EPA receives information that shows that the law unreasonably restricts, impedes or operates as a ban on the importation of hazardous waste, EPA will make a final decision to approve the State's application for final authorization. Comments are therefore requested on whether the revised South Carolina law meets the consistency requirements of § 271.4(a).

In making a final determination on South Carolina's final authorization application, EPA will consider comments received at the hearing or during the public comment period. The EPA expects to make a final decision by November 15, 1985 on whether to approve South Carolina's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Inter-governmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

The notice is issued under the authority of section 2002(A), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(A), 6926, 6974(b). EPA Delegation 8–7.

Dated: September 9, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85–22061 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPTS–50534; TSH FRL–2848–7]

Halogenated-N-(2-Propenyl)-N-[Substituted Phenyl] Acetamide; Proposed Determination of Significant New Uses

Correction

In FR Doc. 85–20304, beginning on page 34500, in the issue of Monday, August 26, 1985, make the following correction:

On page 34504, third column, § 721.54(b)(1), the second line should read "requirements of § 721.17, importers and".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 420

45 CFR Part 101

Medicare Program; Physician Fee Freeze Sanctions

AGENCY: Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth OIG procedures for the imposition of civil money penalties and Medicare program exclusions on physicians who choose not to be participating physicians and who raise charges to Medicare beneficiaries in violation of the freeze on such fees contained in Section 2306 of Pub. L. 98–369 (the Deficit Reduction Act of 1984). The proposed rule also modifies existing regulations to permit the OIG to impose civil money penalties and assessments on those who choose to be participating physicians under the Medicare program and who violate their participation agreements as set forth in Section 2306. This regulation does not pertain to HCFA's responsibility for the Physician Fee Freeze.

DATES: To assure consideration comments must be received by October 15, 1985.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–1, 330 Independence Avenue, SW., Room 5246, Washington, D.C. 20201.

If you prefer, you may deliver comments to Room 5246, 330 Independence Avenue, SW.,

Washington, D.C. In commenting please refer to file code *LRR–1*. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks from today in Room 5643, 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. Phone Number (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: James Patton, (301) 594–3957.

SUPPLEMENTARY INFORMATION:

I. Violation of the Physician Fee Freeze

A. Background

Section 2306 of Pub. L. 98–369 added to the Social Security Act ("the Act") a new section 1842(b)(4), which imposes a freeze on Medicare reimbursement for physician services for a period, currently fifteen months, beginning July 1, 1984, and a new section 1842(h), which establishes a participation program for physicians and suppliers. It also added to the Act a new section 1842(j), which provides that if a non-participating physician knowlingly and willfully bills Medicare beneficiaries during the fifteen month period beginning July 1, 1984, for charges in excess of such physician's actual charges for the calendar quarter beginning April 1, 1984, the Secretary may: (1) Exclude the physician from Medicare program participation for up to five years; (2) impose a civil money penalty and assessment as described in Section 1128A of the Act; or (3) impose both the exclusion and the monetary penalty.

B. Detection and Referral of Violations

HCFA will refer cases for possible sanction and/or civil monetary action to the OIG. The method for making referrals to the OIG is set forth in procedures that have been established by the Health Care Financing Administration (HCFA). These procedures are not part of this regulation and are provided as information only.

HCFA has issued instructions that require the carrier to perform routine monitoring of the charges of nonparticipating physicians and investigate related beneficiary compliants (Medicare Part B Intermediary Letter 84–6). These instructions detail procedures for issuing a warning notice to a physician when the carrier believes that a violation has occurred.

The physician, at that time, has the opportunity to provide to the carrier a written explanation setting forth the reasons why the physician believes that the charges were not in violation of the freeze. If a physician does not provide adequate justification for the increased charges, the carrier will be required to determine if the physician thereafter corrects his or her billing practices based on the warning notice. If the physician takes corrective action, there will be no further development of the case. However, if the carrier detects a continuation of the suspected violations, the carrier will perform additional investigation. Where appropriate, the case will be referred to the OIG for a determination under the sanction and penalty authorities. This process, the responsibility of HCFA, is not of this regulation.

C. Exclusion and Monetary Penalty Determinations

The responsibility for making determinations of civil monetary penalties and assessments or exclusions rests with the OIG. The OIG will determine the nature and extent of the sanctions based on criteria, such as the severity and frequency of the violations and the impact of the violations on Medicare beneficiaries. The Conference Report accompanying the Act noted that the Secretary will "exercise this authority vigorously but prudently, applying sanctions commensurate with the offense," and that penalties will be imposed "on physicians who are serious violators of the program." The Conference Report also provided guidance on the factors to be considered by the Secretary in determining the sanction to impose. These factors include: (1) Whether there is a pattern of increased charges; (2) the extent to which patients faced (incurred) increased costs as a result; and (3) whether the amounts of the increased costs are significant (H.R. Rep. No. 98–861, 98th Cong., 2nd Sess., 1314 (1984) (Conference Report)). The OIG will consider these factors in its determination process.

We have included in this proposed regulation a new section 42 CFR 420.102 which states that the OIG will use, with minor conforming changes, the procedures with respect to determining the length of the exclusion and the amount of the monetary penalty and assessment that are contained in the existing regulations pertaining to fraud and abuse determinations. In addition, the notification, effectuation, and appeal procedures under the existing regulations will be used for the fee freeze provisions. The existing regulations for exclusions are contained in 42 CFR Part 420 and, for civil money penalties, in 45 CFR Part 101.

Section 2306 of the Deficit Reduction Act requires that exclusions from the Medicare program based on violations of the fee freeze may be for a period not exceeding five years. We are implementing this provision in 42 CFR 420.103 of these proposed regulations.

It should be noted that any physician excluded from program participation under this section will not be automatically reinstated into Medicare program participation until application for reinstatement is made under procedures contained in 42 CFR 420.130 through 420.136. However, we are modifying our reinstatement procedures to state that where the exclusion for violations of the freeze has been for five years the OIG must automatically approve an application for reinstatement. If the physician is also excluded for a longer period of time under another sanction provision the five year maximum exclusion period would not be applicable.

The Act also provides that an exclusion will not be imposed if the physician is a sole community physician or the sole source of essential specialized services in a community. We are implementing this provision in § 420.103 of these proposed regulations. As a practical matter, in making sanction determinations the OIG has always taken into account the effect that the sanction would have on beneficiary access to health care services. We will, however, take special care to insure that no exclusions are imposed against a sole community physician or a physician who is providing essential specialized services. Where we determine that such a physician has violated the fee freeze, we will impose only a monetary penalty and assessment.

D. Issues Related to Beneficiary Liability

The Department of Health and Human Services has established procedures that insure that beneficiaries are informed of exclusion actions and are protected from liability arising out of the fact that such services provided by an excluded physician are no longer reimbursable under Medicare (42 CFR 420.115). HCFA will continue to use those procedures. Whenever a beneficiary submits a claim for items or services furnished by an excluded party, HCFA pays the first claim and immediately sends a notice to the beneficiary explaining that the party has been excluded. HCFA will pay for services furnished to that beneficiary by the excluded party for up to 15 days after the date on the beneficiary notice. It should be noted, however, that if an

excluded party submits or causes to be submitted a claim for services furnished after the effective date of the exclusion, the OIG may impose a monetary penalty and assessment against the party. Implementation of this provision is a HCFA responsibility and is not contained as part of this regulation.

Section 1842(j)(4) of the Act permits the Secretary to reimburse the beneficiary, out of any monetary penalty or assessment collected, for the amount of the excess charges billed by the sanctioned physician to that beneficiary. This responsibility also rests with HCFA, and is not contained as a part of this regulation.

II. Violations of the Participation Agreement

Section 2306 of the Deficit Reduction Act also enacted section 1842 (h) and (i) of the Act. These sections are specifically designed to establish a participating physician and supplier program under Medicare.

A participating physician or supplier is one who voluntarily enters into an agreement to accept assignment for all services provided to Medicare patients during the period covered by the agreement. Under assignment, the approved charge determined by the Medicare program is the full charge for the service. The approved charge is the total of the Medicare payment and the applicable deductible and coinsurance amounts.

The participating physician or supplier would be in violation of the participation agreement if the party collected or attempted to collect from the beneficiary any amount in excess of the applicable deductible and coinsurance. A participating physician or supplier would also be in violation of the agreement if the party refused to accept assignment for an item or service that is reimbursable under Medicare.

Section 2306 of the Deficit Reduction Act also amended sections 1128(A)(a)(2) and 1877(d) of the Social Security Act to provide that if a participating physician or supplier violates the participation agreement, the party may be subject to civil money penalties and assessments, or criminal prosecution. The OIG will impose civil money penalties and assessments using the procedures contained with 45 CFR Part 101. We have modified 45 CFR 101.102 of the regulations, which sets forth the basis for imposing penalties, to include violations of a participation agreement as a basis for imposing penalties.

III. Impact Analysis

Executive Order 12291

We have determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291 because they will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. We do not expect these regulations to have such an effect.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. The law on which these regulations are based is specific, and there is little leeway in implementing the requirements. Some of the sanctions that the Federal Government will impose as a result of these regulations will have an impact on physicians. However, we do not anticipate that a substantial number of physicians will be significantly affected by these proposed regulations. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. This proposed rulemaking does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

IV. Response to Comments

Because of the large number of comments we expect to receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider comments and respond to them in the preamble to that rule.

List of Subjects

42 CFR Part 420

Abuse, Administration practice and procedures, Contracts, [Agreements], Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilitites, Health Maintenance Organization [HMO], Health professions, Health Suppliers, information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, , Reporting and Recordkeeping requirements, Supervision, Utilization and Quality Control Peer Review Organizations (PRO).

45 CFR Part 101

Penalties, Medicare, Medicaid, Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child health.

TITLE 42—PUBLIC HEALTH

A. 42 CFR Chapter IV, Part 420 is proposed to be amended as set forth below:

PART 420—PROGRAM INTEGRITY

1. The authority citation for Part 420 is revised to read as follows:

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395(j), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

2. The Table of Contents for Subpart B is amended by adding entries for §§ 420.102 and 420.103.

Subpart B—Exclusion or Suspension of Practioners, Providers, Suppliers of Services, and Other Individuals

Sec.

* * * * *

420.102 Sanction for violation of the freeze on physician charges.

420.103 Exclusion for violation of the freeze on physician charges.

* * * * *

3. In Subpart B, the authority citation and § 420.100 is revised to read as follows:

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395u(j), 1395y(d) 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

§ 420.100 Basis and scope.

This subpart implements Sections 1128, 1842(j), and 1862 (d) and (e) of the act. It sets forth criteria and procedures for (a) excluding practitioners, providers, and suppliers of services who have defrauded of abused the Medicare program or, for those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and (b) for suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services programs. It also specifies the appeal rights of a suspended individual and the procedures for reinstatement of excluded and suspended individuals. The procedures set forth in § 420.101 through 420.115 also apply to terminations of provider agreements under § 489.53(a) (6), (7), or (8) of this chapter.

4. Subpart B is amended by adding new §§ 420.102 and 420.103 to read as follows:

§ 420.102 Sanctions for violations of the freeze on physician charges.

(a) Whenever the OIG determines that a physician, who is not a participating physician under section 1842(h) of the Act, has during the statutory period of the freeze (1) provided services to a beneficiary and (2) knowingly and willfully billed that beneficiary for actual charges that are in excess of the physician's actual charges for the calendar quarter beginning on April 1, 1984, the CIG may exclude the physician from program participation for a period of up to five years, impose a monetary penalty or assessment against the physician, or both.

(b) If the OIG makes a determination under paragraph (a) of this section that involves a monetary penalty or assessment, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in 45 CFR 101.100 through 101.133.

(c) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician from Medicare program participation without imposing a monetary penalty or assessment, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in § 420.100 through § 420.115 and § 420.130 through § 420.134.

§ 420.103 Exclusion for violations of the freeze on physician charges.

(a) In excluding a physician under § 420.102, the exclusion period determined under § 420.114 may not exceed five years.

(b) The OIG will not impose an exclusion if it determines that the physician is the sole source of essential specialized service or a sole community physician.

5. In Subpart B, § 420.134 is amended by adding a new paragraph (e) to read as follows:

§ 420.134 Notice of action on request for reinstatement.

* * * * *

(e) The OIG must automatically reinstate a physician excluded only on the basis of § 420.102 if that exclusion has been in effect for five (5) years.

TITLE 45—PUBLIC WELFARE

B. 45 CFR, Subtitle A, Part 101 is proposed to be amended as set forth below:

PART 101—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 101 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A and 1842(j) of the Social Security Act (42 U.S.C. 1302, 1320a–7 and 42 U.S.C. 1320a–7a and 1395u(j)).

2. In § 100.100(a), paragraph (a) is revised to read as follows.

§ 101.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, and 1842(j) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, and 1395u(j)).

* * * * *

3. In § 100.102, is amended by revising paragraph (b) to read as follows:

§ 101.102 Basis for civil money penalties and assessments.

* * * * *

(b) The Department may impose a penalty against any person whom it determines in accordance with this part:

(1) Has presented or caused to be presented a request for payment in violation of the terms of:

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged; or

(iii) An agreement to be a participating physician or supplier under section 1842(h) (1); or

(2) Is a non-participating physician under section 1842(j) of the Act and has knowingly and willfully billed individuals enrolled under Part B of Title XVIII of the Act, during the statutory period of the freeze, for actual charges in excess of such physicians, actual charges for the calendar quarter beginning on April 1, 1984.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: May 3, 1985.

Approved: July 24, 1985.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–21981 Filed 9–12–85; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

Procedures for Exchanges Involving Fee Federal Coal Deposits

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish procedures and standards by which fee coal exchanges being processed by the Bureau of Land Management would be reviewed by the Department of Justice. It would allow Bureau field officials to integrate Department of Justice consideration of the anti-trust consequences of such proposed exchange(s) into their decision as to whether an exchange is in the public interest.

DATE: Comments should be submitted by October 15, 1985. Comments postmarked or received after the date set out above may not be considered during the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

David Hemstreet, (202) 343–8693

or

Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The Commission on Fair Market Value Policy for Federal Coal Leasing recommended that the Bureau of Land Management pursue fee coal exchanges

"more vigorously, but in a careful and prudent manner, to consolidate Federal and non-Federal coal lease holdings of equivalent value into logical mining units." Although the Commission did not recommend that the Department of Justice review fee coal exchanges, its report recognized the controversial nature of such exchanges and the allegation from some that, in certain situations, such exchanges may have anti-trust consequences. In its response to the Commission Report, the Department of the Interior, among other things, recognized that a major concern in fee coal exchanges is their possible anti-trust consequences. The Department's response stated that the Bureau will routinely request a review by the Department of Justice when processing fee coal exchanges. The proposed rulemaking would provide the procedures that would be followed by the Bureau when referring coal exchanges to the Department of Justice for review.

The proposed rulemaking would provide for a public meeting on a fee coal exchange proposal shortly after its receipt or initiation. The public meeting would be open to comment on all public interest factors of such exchange. The public is asked to specifically comment on whether the public meeting should be held early in the exchange process, as provided in the proposed rulemaking, or with the issuance of the notice of realty action near the end of the exchange process.

Another issue on which public comment is requested is whether the final rulemaking should provide a minimum size threshold below which no anti-trust review would be required. A 100-million ton increase in a private party's marketable reserves has been suggested as that threshold.

The principal author of this proposed rulemaking is David Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rulemaking would provide a procedure for Department of Justice review of the anti-trust considerations of any fee coal exchange being processed by the Bureau of Land Management. The advice of the Department of Justice on anti-trust consequences would become a component of the Bureau field official's determination as to whether a proposed exchange, whether for a large or small concern is in the public interest.

The information collection requirements that would be imposed by this proposed rulemaking would be exempt from clearance by the Office of Management and Budget under 44 U.S.C. 3508 because there would be fewer than 10 respondents per year, with the respondents rarely exceeding 2 in most years.

List of Subjects in 43 CFR Part 2200

Administrative practice and procedure, National forests, Public lands, Public lands—classification, Public lands—mineral resources.

Under the authority of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1701 et seq.), it is proposed to amend Part 2200, Group 2200, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2200—[AMENDED]

1. The authority citation for Part 2200 would be revised to read:

Authority: 43 U.S.C. 1715, 1716, 1732 and 1740.

2. Part 2200 is amended by adding a new subpart 2203 to read:

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

Sec.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

§ 2203.0–6 Policy.

When determining whether a fee exchange of Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management shall consider the advice of the Attorney General of the United States in making the determination of public interest.

§ 2203.0–9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 of this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon receipt of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of initiation or notice of receipt of an exchange proposal as set forth in § 2201.2 of this title, which will:

(a) Include a request for public comments on the public interest factors of the exchange proposal; and

(b) Set the time and place where a public meeting will be held to receive public comments on the public interest factors of the proposed exchange.

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit on a form approved by the Director, Bureau of Land Management, specific information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the anti-trust consequences of the proposed exchange.

(b) The authorized officer shall transmit a copy of the information required by paragraph (a) of this section to the Attorney General upon its receipt.

(c) All non-proprietary information submitted under paragraph (a) of this section shall be made a part of the public record on such proposed exchange. With respect to proprietary information submitted under paragraph (a) of this section, only a description of the type of information submitted shall be included in the public record.

§ 2203.3 Public meeting.

Any public meeting held pursuant to § 2203.1 of this title shall:

(a) Follow procedures established by the authorized officer, which shall be announced prior to the meeting; and

(b) Be recorded and a transcript prepared, with the transcript and all

written submissions being made a part of the public record of the proposed exchange.

§ 2203.4 Consultation with the Attorney General.

(a) The authorized officer shall, at the conclusion of the comment period and public meeting provided for in § 2203.1 of this title, forward to the Attorney General copies of the comments received in response to the request for public comments and the transcript and copies of the written comments received at the public meeting.

(b) The authorized officer shall allow the Attorney General 90 days within which the Attorney General may advise, in writing, on the anti-trust consequences of the proposed exchange.

(c) If the Attorney General requests additional information concerning the proposed exchange, the authorized officer shall request, in writing, such information from the person proposing the exchange, allowing a maximum period of 30 days for the submission of the requested information. The 90-day period provided in paragraph (b) of this section shall be extended for the period required to obtain and submit the requested information, or 30 days, whichever is sooner.

(d) If the Attorney General notifies the authorized officer, in writing, that additional time is needed to review the anti-trust consequences of the proposed exchange, the time provided in paragraph (b) of this section, including any additional time provided under paragraph (c) of this section, shall be extended for the period requested by the Attorney General. If the Attorney General has not responded to the request for anti-trust review within the time granted for such review, including any extensions thereof, the authorized officer may proceed with the exchange without the advice of the Attorney General.

§ 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

August 12, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-21943 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-177]

National Industrial Transportation League—Petition To Institute Rulemaking on Negotiated Motor Common Carrier

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On February 25, 1985, the National Industrial Transportation League (NITL) filed a petition with the Commission seeking institution of a rulemaking proceeding concerning the reasonableness of unpublished motor carrier rates that are negotiated between a shipper and a carrier. According to NITL, there are an increasing number of instances where a shipper who has shipped goods, and initially has been billed in reliance on a negotiated rate, is later billed at the higher published rate due to the carrier's failure to file the lower negotiated rate with the Commission. Petitioner proposes a rule that would provide a limited judicial defense for a shipper who is sued for underchanges in those circumstances. The Commission is instituting this proceeding to allow the public to comment on this matter, including the rule proposed by NITL.

DATE: Comments are due October 15, 1985.

ADDRESSES:

Send an original and 10 copies of comments to: Ex Parte No. MC-177, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to petitioner's representative: James E. Bartley, Executive Vice President, The National Industrial Transportation League, 1090 Vermont Avenue, NW, Suite 410, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT:

Leonard L. Arnaiz, (202) 275-7831
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources.

This advance notice is issued under the authority of 49 U.S.C. 10321, 10701 and 10704; and 5 U.S.C. 553.

Decided: September 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Comissioner Andre commented with a separate expression. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-22099 Filed 9-12-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Final Rule To List the Bay Checkerspot Butterfly as Endangered and To Designate Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of deadline and comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the deadline for taking final action on a proposal to list the bay checkerspot butterfly (*Euphydryas editha bayensis*) and to designate its critical habitat is extended for a period not to exceed 6 months in order to examine questions regading the taxonomy and status of this subsepcies. During the extended period, the Service will establish a scientific panel to review the information now available regarding the butterfly. The public comment period on this proposal is also extended for 60 days.

DATES: The deadline for final action on the proposal is now March 11, 1986. The public comment period is extended until November 12, 1985.

ADDRESSES: Comments and other materials concerning the status of the bay checkerspot butterfly should be sent to: Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500

N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATON CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot butterfly (*Euphydras editha bayensis*) has been reduced in both population size and geographical range. Of 16 colonies formerly known, 11 have recently become extinct. Colonies have been eliminated in the course of freeway construction, subdivision construction and the introduction of exotic plants, and livestock overgrazing coupled with drought.

On September 11, 1984 (49 FR 35665), the Service published a proposed rule to list as endangered and designate critical habitat for the bay checkerspot butterfly. The original comment period for this proposal closed on November 13, 1984. This period was extended on October 26, 1984 (49 FR 43076), until November 23, 1984, to allow for a public meeting that was held in San Mateo, California, on November 13, 1984. The comment period was subsequently reopened on March 14, 1985 (50 FR 10276), at the request of counsel for United Technologies Corporation (UTC). Once again, on August 12, 1985 (50 FR 32455), the comment period on this proposal was extended for a period of 10 days to allow further information to be entered into the record. On August 16, 1985, representatives of UTC and a biologist, Dr. Richard Arnold, who has conducted studies of the butterfly under contract to UTC, met with officials of the Department of the Interior to discuss the status of the subspecies. As a result of the information and reports prepared by Dr. Arnold and formally submitted to the Department at this meeting, the Service now finds that there is a substantial scientific disagreement regarding the sufficiency and accuracy of the available data supporting the listing of the butterfly. In particular, Dr. Arnold has suggested that the bay checkerspot may be more widespread than had been believed at the time of the proposal and has questioned whether it is subspecifically distinct from other known populations of the species farther to the south. When such a scientific disagreement exists regarding the interpretation of data relevant to the listing decision, the 1-year period within which the Service must ordinarily take final action on a proposal to list a species may be extended for not more than 6 months, in accordance sith section 4(b)(6)(B)(i) of the Endangered Species Act (Act). Final action on the proposal must now be taken by March 11, 1986. During this period, a panel will be established, composed of scientists within the Service, to review all the available evidence on the status of the bay checkerspot butterfly. The period for public comment on the proposal is also extended until November 12, 1985.

The Service will consider any recommendations of the panel and any further information submitted during the comment period in determining whether the bay checkerspot should be listed and its critical habitat designated, or whether the proposal should be withdrawn in accordance with section 4(b)(6)(B)(ii) of the Act.

Author

The primary author of this notice is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1795 or FTS 235–1975).

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 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. 1255; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: September 10, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22104 Filed 9–11–85; 3:29 pm]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Export Enhancement Advisory Group; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C App. I), the U.S. Department of Agriculture announces the following meeting:

Name: Agricultural Export Enhancement Advisory Group.
Date: October 9, 1985.
Time: 2:00 p.m. to 4:00 p.m.
Place: U.S. Department of Agriculture.
Purpose: To provide advice on the administration of the Agricultural Export Enhancement Program.
Type of Meeting: Closed.
Reason for Closing: The premature disclosure of information about the proposed Agricultural Export Enhancement Program would likely significantly frustrate implementation of the proposed program.
Authority to close meeting: This determination that this meting falls within exemption 9(b) of the Government in the Sunshine Act was made by the Secretary of Agriculture pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act.
Contact Person: Melvin E. Sims, General Sales Manager and Assistant Administrator, 447-3173
Done at Washington, D.C. this 9th day of September , 1985.

Richard A. Smith,
Administrator, FAS.
[FR Doc. 85-21998 Filed 9-12-85; 8:45 am]
BILLING CODE 3410-10-M

Forest Service

Deerlodge National Forest Grazing Advisory Board; Meeting

The Deerlodge National Grazing Advisory Board will meet at 10:00 a.m., October 10, 1985, in Room 315 of the Federal Building, corner of Copper and Main in Buttle, Montana.

The purpose of the meeting will be a review of the Proposed Forest Plan for the Deerlodge National Forest.

The Advisory Board meeting is open to the public. Any member of the public who wishes to be on the agenda may submit a written statement and should contact Tom Griffith at the Deerlodge National Forest Supervisor's Office.

Frank E. Salomonsen,
Forest Supervisor.
September 4, 1985.
[FR Doc. 85-21956 Filed 9-12-85; 8:45 am]
BILLING CODE 3410-11-M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trail Advisory Council will be held at 9:00 a.m. on Saturday, September 28, 1985, at Wakulla Springs Lodge, Wakulla Springs, Florida 32305.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include a discussion of the proposed draft comprehensive management plan and trail symbol.

The members of the Advisory Council are as follows:

Mr. A.T. Andrews, Gainesville, Florida
Mr. John Anthony, Boca Raton, Florida
Mr. Ernest A. Baldini, Cocoa Beach, Florida
Ms. Constance Bersok, Gainesville, Florida
Mr. Paul F. Ebersbach, Avon Park Air Force Range, Florida
Mr. Karl F. Eichhorn, Cocoa Beach, Florida
Mr. Albert G. Gregory, Tallahassee, Florida
Mr. F. Norman Heintz, Tallahassee, Florida
Mr. Roger Hunziker, Lake Butler, Florida
Mr. James "Pete" Langstaff, Oklawaha, Florida
Mr. John Morehead, Homestead, Florida
Mr. John F. O'Meara, Tallahassee, Florida
Mr. W. James Pace, Lakeland, Florida
Ms. Ethel C. Palmer, Clearwater, Florida
Mr. Friedrich E. H. Schiller, West Palm Beach, Florida
Mr. John H. Schirard, Sanford, Florida
Mr. Ben Swendsen, Palmdale, Florida
Ms. Robin Will, St. Marks, Florida

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact F. Norman Heintz, Recreation Staff Officer, USDA–Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681–7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida on September 4, 1985.

Don Percival,
Forest Supervisor.
[FR Doc. 85-21957 Filed 9-12-85; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 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: October 3, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th and Constitution Avenue NW., Washington, D.C. The meeting will continue to its conclusion on October 4, 1985, in Room 3407, the Herbert C. Hoover Building.

This will be the first meeting of the EITAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The

controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of recommendations on 1522 lasers for upcoming list review.
5. Discussion of 1558 (vacuum tubes) to determine the appropriateness of its coverage by the committee.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting 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.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof 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 contact Jess M. Bratton 202–377–2583.

Dated: September 10, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–21932 Filed 9–12–85; 8:45 am]

BILLING CODE 3510-DT-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on September 24, 1985, 10:00 a.m., Herbert C. Hoover Building, Room 1412, 14th and Constitution Avenue NW., Washington, D.C. 20030 (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 10:00 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: September 9, 1985.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–21933 Filed 9–12–85; 8:45 am]

BILLING CODE 3510-DR-M

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument; Massachusetts Institute of Technology

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW Washington, D.C.

Docket No. 85–164. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: NMR Magnet System, Model 360/89 and Accessories. Manufacturer: Oxford Instruments Limited, United Kingdom. Intended Use: See notice at 50 FR 23171. Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a cryogenic environment, a stability of better than 5×10^{-8} per hour and a homogeneity (peak-to-peak variation) of better than 2×10^{-9}.

the capability of the foreign instrument described above is pertinent to the application's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the application's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Statutory Import Programs Staff.

[FR Doc. 85–21940 Filed 9–12–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Approval of Exploration License Revision; Ocean Minerals Co.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of approval of exploration license revision for Ocean Minerals Company.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970, the National Oceanic and Atmospheric Administration (NOAA) on August 30, 1985, approved revision number 1 to *Deep Seabed Hard Mineral Resources Exploration License USA–1* as proposed by the licensee, the Ocean Minerals Company (OMCO), 465 N. Bernardo Avenue, Mountain View, California 94043, on May 30, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Padan or M. Karl Jugel, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, DC 20235 (202) 653–8257.

Approved:

Dated: September 6, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–21945 Filed 9–12–85; 8:45 am]

BILLING CODE 3510-12-M

National Advisory Committee on Oceans and Atmosphere; Meeting

September 10, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, September 30-October 1, 1985. The meeting will be held in Page Building #1, Rooms 416 and B-100, 2001 Wisconsin Avenue, NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. on September 30 and commence at 8:30 a.m. and end at 3:30 p.m. on October 1.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, or national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, September 30, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B-100, Washington, DC

9:00 a.m.-12:00 noon—Plenary

9:00 a.m.-9:30 a.m.
- Announcements

9:30 a.m.-10:30 a.m.
- Guest Speaker: TBA

10:30 a.m.-12:30 noon
- Committee Discussion of NOAA Roles and Missions Study

12:00 noon-1:00 p.m.—Lunch

1:00 p.m.-3:00 p.m.—Plenary

1:00 p.m.-2:00 p.m.—Guest Speaker: Richard E. Hallgren, Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Weather Service

2:00 p.m.-3:00 p.m.—Guest Speaker: Joseph O. Fletcher, Assistant Administrator for Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the Office of Oceanic and Atmospheric Research

3:00 p.m.-5:00 p.m.—Panel meetings

3:00 p.m.-5:00 p.m.—Atmospheric Affairs, Chairman: S. Fred Singer, Room B-100. Topic: Panel Work Session. Speakers: None

3:00 p.m.-5:00 p.m.—Exclusive Economic Zone, Chairman: Lee C. Gerhard, Room 416. Topic: Panel Work Session. Speakers: None

5:00 p.m.—Recess

Tuesday, October 1, 1985

2001 Wisconsin Avenue, NW., Page Building # 1, Rooms 416 & B-100, Washington, DC 20235

8:30 a.m.-12:00 noon—Plenary

8:30 a.m.-9:30 a.m.

Guest Speaker: William G. Gordon, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Marine Fisheries Service

9:30 a.m.-10:30 a.m.

Guest Speaker: Paul M. Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Ocean Service

10:30 a.m.-12:00 noon

Committee Discussion of NOAA Roles and Missions Study

12:00 a.m.-1:00 p.m.—Lunch

1:00 p.m. 3:30 p.m.—Plenary
- Panel Reports
- Old Business
- New Business

3:30 p.m.—Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmospheric, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: September 10, 1985.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 85-21967 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-12-M

Marine Mammals; Issuance of Permit; Hagenbeck Tierpark.

On July 8, 1985, notice was published in the **Federal Register** (50 FR 27839) that an application had been filed by Hagenbeck Tierpark (P356), Postfach 54 09 03, 2000 Hamburg 54, (Stellingen), West Germany for a permit to take Atlantic bottlenose dolphins for the purpose of public display in West Germany.

Notice is hereby given that on September 6, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following office(s):

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 9, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-22023 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Los Angeles County Museum of Natural History

On May 22, 1985, notice was published in the **Federal Register** (50 FR 21108) that an application had been filed by the Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, California 90007 for a scientific research permit to study Pacific harbor seals (*Phoca vitulina richardii*).

Notice is hereby given that on September 6, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated September 9, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-22024 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Restraint Limit for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

September 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 16, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On June 17, 1985 a notice was published in the **Federal Register** (50 FR 25113) which announced the signing on June 4, 1985 of a new Bilateral Cotton, Wool and Man-Made fiber Textile Agreement between the Governments of the United States and Mauritus. The notice also announced establishment under the agreement of a control limit of 115,000 dozen for the knitwear group which includes Categories 345 (cotton sweaters), 438 (wool knit skirts and blouses), 445 and 446 (wool sweaters) and 645 and 646 (man-made fiber sweaters), produced or manufactured in Mauritius and exported during the period which began on October 1, 1984 and extends through September 30, 1985. In the letter which follows this notice, the CITA Chairman directs the Commissioner of Customs to reduce the knitwear group limit to 106,950 dozen to account for carryforward used in the previous agreement 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.

September 10, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 12, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mauritus.

Effective on September 16, 1985, the directive of June 12, 1985 is hereby further amended to include an adjustment restraint limit of 106,950 dozen [1] for cotton wool and man-made fiber textile products in 345, 438, 445, 645 and 646 as a group.

The Committee for the Implemention of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21937 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 440 (woven wool shirts and blouses)

September 10, 1985.

On August 7, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 440. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

[1] The limit has not been adjusted to account for any imports exported after September 30, 1984.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultation between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 440, produced or manufactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports in this category at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 440 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21938 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities and a service to be

provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 13, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 12, May 20, June 7, July 5 and July 19, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 14411, 50 FR 20824, 50 FR 24018, 50 FR 27650 and 50 FR 29469) of proposed additions and deletions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Commodities

Pallet, Material Handling, 3990-00-892-4394
(Requirements for Mechanicsburg, Pennsylvania; Memphis, Tennessee; Richmond, Virginia and Columbus, Ohio Depots only)
Wood Container, 8115-LI-599-7220, 8115-LI-599-7320, 8115-LI-599-7820, 8115-LI-599-8020, 8115-LI-599-8120, 8115-LI-599-7920, 8115-LI-465-0920, 8115-LI-465-1020, 8115-LI-465-4120
(Requirements for Robins Air Force Base, Georgia only)

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities are hereby deleted from Procurement List 1985:

Pillow, Bed, 7210-01-035-3342
Paper Set, Manifold and Carbon, 7530-00-205-0511, 7530-00-880-9154.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-21925 Filed 9-12-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: October 16, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Strap, Webbing, Litter Securing, 6530-00-784-4335
Kit, First Aid, Eye Dressing, 6545-00-853-6309
Brush, 7920-00-255-5135, 7920-00-269-0933, 7920-00-267-1213, 7920-00-267-1215, 7920-00-269-1259
Aerosol Paint, Lacquer, 8010-00-721-9742, 8010-00-079-2754, 8010-00-141-2952, 8010-00-721-9743, 8010-00-584-3148, 8010-00-721-9479, 8010-00-141-2950, 8010-00-721-9744, 8010-00-721-9745, 8010-00-965-2389, 8010-00-079-2756, 8010-00-141-2951, 8010-00-584-3149, 8010-00-584-3154, 8010-00-721-9483, 8010-00-883-5329, 8010-00-965-2390, 8010-00-965-2392, 8010-00-721-9746, 8010-00-721-9747, 8010-00-721-9748, 8010-00-721-9753, 8010-00-141-2958, 8010-00-721-9749, 8010-00-721-9750, 8010-00-721-9754, 8010-00-835-7215, 8010-00-965-2391, 8010-00-290-6983, 8010-00-290-6984, 8010-00-582-5382, 8010-00-584-3150, 8010-00-721-9487, 8010-00-721-9751, 8010-00-721-9752, 8010-00-515-2487
Pin, Tent, Wood, 8340-00-261-9752

Services

Janitorial/Custodial, Defense Mapping Agency, 175 Brookside Avenue, West Warwick, Rhode Island.

C. W. Fletcher,

Executive Director.

[FR Doc. 85-21926 Filed 9-12-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; Freight Carriers; Correction

AGENCY: Miltary Traffic Management Command (MTMC), DOD.

ACTION: Correction.

SUMMARY: The action portion of this notice published on July 19, 1985, 50 FR 29470, is corrected and accordingly is to read as follows: Proposed procedures for the use of DD Forms 1840 and 1840R.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige, HQ Military Traffic Management Command, ATTN: MT-PPM (Room No. 410), 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

Peter J. Ladzinski,

Alternate Department of the Army, Liaison with the Federal Register.

[FR Doc. 85-21953 Filed 9-12-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Grants; Upward Bound Program; Application Notice for New Awards for Fiscal Year 1986

Applications are invited for new awards under the Upward Bound Program.

Authority for this program is contained in sections 417A and 417C of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1a)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to permit applicants to carry out projects designed to generate in participants the skills and motivation necessary for success in education beyond high school.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by December 16, 1985.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Room 3633, ROB #3, Attention: 84.047 (Upward Bound), Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW, Washington, DC

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary is accepting applications for up to three years of funding. However, the Secretary will not fund an applicant for a period of time longer than is requested by the applicant in its application. Applicants requesting multi-year funding must, in accordance with 34 CFR 75.117, submit information that shows why a multi-year project is needed; a budget for the first year of the project; and an estimate of the Federal funds needed for each additional year requested.

The applications for new awards will be evaluated competitively under the selection criteria for new awards contained in 34 CFR 645.31 for the Upward Bound Program. In addition, Upward Bound applicants that have conducted an Upward Bound project within three previous years may receive up to fifteen additional points on the basis of their prior experience of service delivery. The prior experience section of the application will be evaluated on the basis of the priority points as specified in 34 CFR 645.32 for the Upward Bound Program.

Available Funds: The Congress has not yet appropriated funds for fiscal year 1986 for the Special Programs for the Disadvantaged. The Senate Budget Resolution recommends fiscal year 1986 funding for these programs at the fiscal year 1985 level of $174,940,000. Should this amount be appropriated, approximately $73,708,800 would be available for the new grant awards under the Upward Bound program. The average grant award under the Upward Bound program in fiscal year 1985 was $175,100. Applications are being requested at this time to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

Application Forms: Application forms and program information packages are expected to be ready for mailing no later than October 14, 1985. Application packages will not automatically be mailed to all institutions of higher education. However, they will be mailed to all currently funded grantees under the Upward Bound Program. Application packages may be obtained by contacting the Division of Student Services, Education Outreach Branch, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue SW, Washington, DC 20202. Telephone number: (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (Approved by Office of Management and Budget under control number 1840–0550.)

Applicable Regulations: Regulations applicable to the Upward Bound Program are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78, and especially 34 CFR 75.253; and

(b) Regulations governing the Upward Bound Program in 34 CFR Part 645.

Further Information: For further information, contact the Education Outreach Branch, Division of Student Services, U.S. Department of Education, Post Office Box 23772, Washington, D.C. 20026–3772. Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1a)

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Dated: September 6, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–21927 Filed 9–12–85; 8:45 am]

BILLING CODE 4000–01–M

National Center for Research in Vocational Education Advisory Committee; Meeting

AGENCY: National Center for Research in Vocational Education Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Center for Research in Vocational Education Advisory Committee. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the

general public of their opportunity to attend.

DATE: September 23, 1985.

ADDRESS: The National Center for Research in Vocational Education, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210.

FOR FURTHER INFORMATION CONTACT: Dr. Howard F. Hjelm, Director, Office of Vocational and Adult Education, Division of Innovation and Development, 300 7th Street, SW., Rm. 519, Reporters Building, Washington, D.C. 20202–5516, (202) 732–2350.

SUPPLEMENTARY INFORMATION: The National Center for Research in Vocational Education Advisory Committee is established under section 404 of the Carl D. Perkins Vocational Education Act of 1984 (Pub. L. 98–524). The Committee is established to advise the Secretary and the National Center's Director with respect to policy issues in the administration of the National Center and in the selection and conduct of major research and demonstration projects and activities of the National Center. Meetings held at the request of the Secretary are conducted in accordance with the Federal Advisory Committee Act (FACA).

The meeting of the Committee is governed by FACA and is open to the public on September 23, 1985 from 1:00 p.m. to 4:00 p.m. The public is being given less than 15 days notice because of new committee members being appointed and difficulty in scheduling the meeting. The proposal agenda includes:

1:00–1:45

1. Swearing in of New Members
2. Orientation
   a. Discussion of Charter
   b. Advisory Committee Legislative Mandate

1:45–2:15

3. National Vocational Education Discretionary Programs

2:15–3:15

4. Secretary's National Priorities
5. Assistant Secretary for Vocational and Adult Education's National Priorities

3:15–4:00

6. Mid-Contract Review Report of the National Center for Research In Vocational Education

This meeting will be held in conjunction with a regular meeting of the Committee to advise the Center Director.

Records are kept of all Committee proceedings and are available for public inspection in the Program Improvement Systems Branch, 300 7th Street, SW., Rm. 519, Reporters Building, Washington, D.C. 20202–5516, (202) 732–2367.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–21887 Filed 9–12–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–85–021]

OFP Case No. 64011–3194–01–12

Powerplant Industrial Fuel Use; Prohibition Orders, Exemption Requests, etc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by LTV Steel Company, Inc., for its Aliquippa Works, Aliquippa, Pennsylvania, and notice and proposed rescission of an order granting a permanent fuel mixtures exemption for the same facility.

SUMMARY: On May 15, 1985, LTV Steel Company, Inc. (LTV), successor by merger to Jones and Laughlin Steel, Inc. (J&L), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") based on the lack of alternate fuel supply not to exceed 1500 full load equivalent hours annually for a boiler located at its Aliquippa Works in Aliquippa, Pennsylvania. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the exemption based on the lack of alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually are found at 10 CFR 503.32.

The petition for exemption based on a limitation not to exceed 1500 full load equivalent hours of operation annually was filed with a request that ERA, pursuant to 10 CFR 501.100 *et seq.*, rescind a permanent 25 percent fuel mixtures exemption granted by ERA to J&L on November 20, 1981, applicable to Boiler No. 61.[1] LTV's Request for Rescission is contingent upon the granting by ERA of the permanent exemption for Boiler No. 61 pursuant to 10 CFR 503.32. Thus, if ERA determines to deny LTV's petition pursuant to 10 CFR 503.32, ERA will treat the Request for Rescission as withdrawn. However, if ERA grants the petition pursuant to 10 CFR 503.32, the Rescission Order will be effective contemporaneously.

The project for which the exemption is requested is a boiler located at LTV's Aliquippa Works. The unit, which is already in place, is designated as Boiler No. 61, and will burn natural gas.

ERA has determined that the petition for exemption is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and § 501.63. ERA retains the right, however, to request additional relevant information from LTV at any time during the proceeding, as circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and § 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. Also ERA is hereby giving notice to all parties to the original fuel mixtures exemption proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposed rescission of the Order granting a permanent fuel mixtures exemption during the 45-day public comment period. The public file containing a copy of this Notice of Acceptance and Availability of Certification and the Notice of Proposed Rescission, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register.**

---

[1] OFP Case No. 55368–3194–01–12 46 FR 57110 (November 20, 1981).

DATES: Written comments are due on or before October 28, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA–FC–85–021 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, D.C. 20585, Telephone (202) 252–1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Buildings, Room 6A–113, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. LTV has filed a petition with ERA requesting a permanent exemption to permit the use of natural gas as the primary energy source for Boiler No. 61, which is already in place at LTV's Aliquippa Works.

Boiler No. 61 is one of six boilers in operation at the Aliquippa Works. LTV initially obtained a permanent 25 percent fuel mixtures exemption for Boiler No. 61, at the Aliquippa Works. Granting the requested exemption would permit efficient operation of each unit, reduce maintenance costs, reduce emissions, increase the useful life of the unit, and conserve energy.

Accordingly, LTV requests that it be granted a permanent exemption permitting it to operate Boiler No. 61 on natural gas for up to 1500 full load equivalent hours on an annual basis. The exemption, if granted, would substitute for the permanent 25 percent fuel mixtures exemption currently applicable to Boiler No. 61. In this connection, LTV is requesting simultaneously with this petition a Request for Rescission of the permanent 25 percent fuel mixtures exemption applicable to Boiler No. 61. LTV's Request for Rescission is contingent on the granting by DOE of LTV's petition for the new exemption for Boiler No. 61. LTV's Request for Rescission is based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to LTV.

Exemption Petition

Section 212(a)(1)(A)(ii) of the Act and 10 CFR 503.32 provide for a permanent exemption for lack of alternate fuel supplies where an MFBI will not be operated in excess of 1500 full load equivalent hours annually. In accordance with the requirements of § 503.32(c), LTV has certified that:

1. The unit will be operated less than 1500 full load hours annually;

2. The use of mixtures is not feasible, as required under § 503.9; and

3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, LTV submitted and certified as accurate the information required by the environmental checklist in § 503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption based on the lack of an alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. LTV has certified that it will secure all applicable permits and approvals prior to commencement of operation of the unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental check-list submitted by LTV pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on LTV's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

Pursuant to 10 CFR 503.3, ERA hereby accepts LTV's petition for a permanent exemption for lack of alternate fuel supplies where an MFBI will not be operated in excess of 1500 full load equivalent hours annually for Boiler No. 61. ERA retains the right, however, to request additional relevant information at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4), acceptance of this petition for exemption by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Rescission Request

ERA hereby accepts LTV's Request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 61. LTV's request for rescission is based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to LTV. Accordingly, pursuant to 10 CFR 501.101(f), LTV has submitted documentation supporting its Request for Rescission. It was originally anticipated that the operation of the boiler would utilize a mixture of petroleum and natural gas with industrial and commercial waste oils and blast furnace gas. Since that time, the production levels at the Aliquippa Works have declined so that presently there is insufficient supplies of blast furnace gas available. In addition, due to the current operating mode of Boiler No. 61 in which it is off line for extended periods of time, supplies of industrial and commercial waste oils are not readily available. Therefore, the use of fuel mixtures is no longer economically feasible due to the operational characteristics of Boiler No. 61 and the production levels at the Aliquippa Works.

Based on LTV's submittal, ERA is proposing to rescind the fuel mixtures exemption for Boiler No. 61. If ERA receives no response within the 45-day public comment period, the Rescission Order shall become final as proposed, contingent on ERA's granting of LTV's petition for exemption pursuant to 10 CFR 503.32.

Issued in Washington, D.C. on August 30, 1985.

Robert L. Davies,

Director, Coal and Electricity Division Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85–21906 Filed 9–12–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA-FC-85-014]

OFP Case No. 67039-9277-20-24

Powerplant and Industrial Fuel Use; Prohibition Orders, Exemptions Requests; Simpson Paper Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order granting to Simpson Paper Company exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Simpson Paper Company (Simpson or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 33.37 MW (net, approximate) combined cycle congeneration facility designed to produce electricity and process steam at Simpson's paper mill in Pomona, California. The final exemption order and detailed information on the proceeding are provided in the

SUPPLEMENTARY INFORMATION: section, below.

DATE: The order shall take effect on November 12, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-1174

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On May 6, 1985, Simpson petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 33.37 MW (net, approximate) combine cycle cogeneration facility consisting of a gas turbine generator, a waste heat recovery boiler, a duct burner and ancillary equipment. As all of the net annual generation of electric power from the unit will be sold to Southern California Edison Company (Edison), the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce approximaterly 116,300 pounds of stream per hour which will supply Simpson's paper mill needs.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Simpson's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in acordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of Section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on June 17, 1985 (50 FR 25119), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on August 1, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment with the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Simpson has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Simpson to permit the use of natural gas as the primary energy source for its cogeneration facility at the Simpson's paper mill in Pomona, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review therof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C. on August 30, 1985.

Robert L. Davies,

Director, Coal & Electricity Division Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85-21905 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-737-000]

Arkansas Power & Light Co.; Filing of Peaking Power Agreement

September 10, 1985.

The filing Company submits the following:

Take notice that Arkansas Power & Light Company (AP&L) filed on August 30, 1985, a proposed Peaking Power Agreement which is a supplement to the Power Coordination Interchange and Transmission Agreement between City of Conway, Arkansas and Arkansas Power & Light Company dated March 1, 1982. The agreement provides for the sale to the City of 20 MW of Peaking capacity and 4,800 MWH of peaking Energy during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately $27,000 per year for the City of Conway based on the actual billings for the twelve month period ended July 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-21909 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-740-000]

Centel Corp., Southern Colorado Power Division; Cancellation

September 10, 1985.

Take notice that on September 3, 1985, Centel Corporation-Southern Colorado Power Division (Centel) tendered for filing a Notice of Cancellation of its Purchase Power Agreement with the City of Las Animas Rate Schedule FERC No. 107.

The filing terminates the Purchase Power Agreement by which Las Animas received its total requirements of Power and energy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-22000 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-681-000]

Central Hudson Gas & Electric Corp.; Rate Filing

September 9, 1985.

The filing Company submits the following:

Take notice that Central Hudson & Gas Electric Corporation (Central Hudson), on August 8, 1985, tendered for filing as a rate schedule an executed agreement dated July 26, 1985 between Central Hudson and the New York Power Authority. The proposed rate schedule provides for Electric Transmission Service and Standby Electric service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.67 per kilowatt and a standby charge of $8.50 per kilowatt per month during the summer and winter peak periods.

Central Hudson states that a copy of its filing was served on NYPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 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. 85-22001 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[ER85-720-000]

The Connecticut Light and Power Co.; Filing of Tariff Changes

September 10, 1985.

The filing Company submits the following:

Take notice that The Connecticut Light and Power Company (Company) on August 30, 1985, tendered for filing proposed changes in its FERC Electric Tariff Resale Service Rate W-2 pursuant to which it provides service to: Second Taxing District, City of Norwalk; Third Taxing District, City of Norwalk; and the Town of Wallingford. The Company also filed proposed changes in its FERC Electric Tariff Resale Service Rate F-2 pursuant to which it provides service to Bozrah Light and Power Company.

The Company proposes to rename the tariffs the "W-3 Rate" and "F-3 Rate" and proposes to a two-phase rate increase for each tariff. The Company states that the proposed Phase One increase in charges is intended to recover general increases in its costs of the higher level of costs to be incurred by the Company due to the expected commercial operation on or about May 1, 1986, of the Millstone Unit 3 nuclear generating station in Waterford, Connecticut.

The Company requests that, in the event that the Commission concludes that the Phase Two rates should be suspended for a period of more than one day, the alternate Phase One rates be made effective on October 30, 1985. The Company requests that the Phase Two rates be made effective on October 31, 1985. If the Phase Two rates are not suspended, or are suspended for only one day, the Company requests that the Phase One rates are to be deemed withdrawn. In addition, in order to synchronize the effectiveness of the Phase Two rate changes with the expected commercial operation of Millstone Unit 3 on or about May 1, 1986, the Companies agree that the effectiveness of the Phase Two filing be suspended until the later of a five-month suspension beyond the Phase Two requested effective date or the date of Commercial operation of Millstone Unit 3.

The Company states that the proposed Phase One increases for the W-3 Rate and the F-3 Rate together would increase total revenues from jurisdictional sales and service by $633,000 or 1.9 percent based on the twelve-month period ending December 31, 1986 (Period II). The Company also states that the proposed Phase Two increases (which include the Phase One increases as well) would increase total revenues from jurisdictional sales and service by $13,786,975 based on period II. After taking into account anticipated fuel savings which will result from replacing fossil-fired generation with nuclear-powered generation when Millstone Unit 3 enters commercial operation, the total Phase Two revenue increases during Period II are estimated by CL&P to be $11,088,078 or 34.7 percent.

Copies of the filing were served upon the Company's jurisdictional customers and the Connecticut Department of Public Utility Control.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-22002 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-741-000]

Idaho Power Co.; Compliance Filing

September 10, 1985.

Take notice that on August 29, 1985, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes original Volume No. 1) during July 1985, along with cost justification on for the rate charged. The filing includes the following supplements:

Utah Power & Light Company—Supplement 45
Sierra Pacific Power Company—Supplement 41
Portland General Electric Company—Supplement 37
Southern California Edison Company—Supplement 31
San Diego Gas & Electric Company—Supplement 26
Washington Water Power Company—Supplement 31
Pacific Gas & Electric Company—Supplement 12
Western Area Power Administration—Supplement 5

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-22003 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-5-003]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 10, 1985.

Take notice that on September 9, 1985, Midwestern Gas Transmission Company (Midwestern) withdrew its July 26, 1985 PGA filing and tendered for filing Sixteenth Revised Tariff Sheet No. 5 to be effective September 9, 1985.

Midwestern states that the withdrawal of the July 26, 1985 PGA filing and this revised tariff sheet are the result of the Commission's rejection in Opinion No. 240 of a Settlement Agreement filed in Docket Nos. RP80-97, *et al.* Rejection of the Settlement requires that Midwestern's primary supplier Tennessee Gas Pipeline Company (Tennessee) impose a surcharge to recover its unrecovered purchased gas cost account balance which in turn will preclude Tennessee from maintaining the weighted average cost of gas reflected in its July 26, 1985 PGA filing. Accordingly, Midwestern is filing the instant rate adjustment in order to track Tennessee's adjustment to its Rate Schedule CD-1 gas rate being filed concurrently.

Additionally, Midwestern states that Tennessee has proposed two alternatives for recovery of its deferred account balance. The first of these alternatives is a direct billing mechanism and the second alternative is a twenty-four month amortization of the balance. Midwestern has also submitted revised tariff sheets which track Tennessee's rate Schedule CD-1 gas rate provided either of these alternatives are accepted by the Commission.

Midwestern requests waiver of the Commission's regulations to the extent necessary to accept the tariff sheet which tracks the Tennessee rate adjustment proposal accepted by the Commission.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 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. 85-22004 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

Monfort of Colorado, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

[Docket No. QF85-660-000]

September 9, 1985.

On August 23, 1985, Monfort of Colorado, Inc. (Applicant), of P.O. Box G, Greeley, Colorado 8062, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located at the Applicant's beef slaughter and processing plant on Highway 85 in Weld County, one mile north of Greeley, Colorado. The facility will consist, of three Allison 501 KB-5 gas combustion turbine/generator units and a waste heat recovery boiler fitted with a supplementary firing burner. The total electric power production capacity of the facility will be 9,000 kW. The primary source of energy is natural gas. Installation of the facility is projected to begin in October 1, 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22018 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-736-000]

Montaup Electric Co.; Rate Filing

September 10, 1985.

The filing Company submits the following:

Please take notice that on August 30, 1985 Montaup Electric Company filed an amendment of a unit sales contract between Montaup and Braintree Electric Department for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 60).

Under the amendment the contract is extended for three years through October 31, 1988 for 25,000 Kw (4.281%). The Capacity Charge of $4.57 per Kw/month agreed to in August, 1983 represents the cost at that time and is below the current cost of $4.78 per kw/month shown in Attachment A.

This filing was served on the affected customer and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-22005 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-655-000]

New York State Energy Research and Development Authority; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 9, 1985.

On August 16, 1985, New York State Energy Research and Development Authority (Applicant), of Two Rockefeller Plaza, Albany, New York 12233, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping cycle cogeneration facility will be located in Auburn, New York. The facility will consist of a natural gas fueled reciprocating engine/generator unit equipped with heat exchangers designed to capture thermal energy from the reciprocating engine coolant and exhaust gases. The heat recovered from the heat exchangers will provide supplementary heat to a hydrothermal energy extraction system, a system designed to extract heat from a warm underground brine reservoir. The facility's total thermal energy will be used to satisfy the domestic hot water and space heating requirements of two nearby school buildings. The primary source of energy will be natural gas. The electric power production capacity of the facility is 115 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22019 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-38-000]

Pel-Tex Oil Co.; Petition for Adjustment

Issued: September 9, 1985.

On May 6, 1985, Pel-Tex Oil Company (Pel-Tex) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978. Pel-Tex seeks a waiver of $171,025.25 of its Btu refund obligations incurred under Commission Order 399-A. In support of its request, Pel-Tex claims that, despite its best efforts, it has been unsuccessful in collecting these refunds from certain royalty and working interest owners.

The procedures applicable to the conduct of this adjustment proceeding are found in Supbart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22006 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-608-000]

Public Service Company of New Mexico; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting in Part and Denying in Part Requests for Waiver, and Establishing Hearing Procedures

Issued: September 6, 1985.

On July 8, 1985, Public Service Company of New Mexico (PNM) submitted two proposed modifications of the fuel adjustment clause (FAC) contained in its firm power rates to five wholesale customers,[1] together with a petition for waiver of § 35.14 of the Commission's regulations (18 CFR 35.14). Specifically, PNM proposes to revise its FAC to exclude the effect of the availability of test energy from Units 1, 2, and 3 of the Palo Verde Nuclear Generating Station (Palo Verde)[2] from the calculation of its fuel adjustment charges and to include fees for the disposal of spent nuclear fuel and/or high level radio-electricity from Palo Verde.

PNM notes that Unit 1 began generating test energy from test operation on June 12, 1985, and that Units 2 and 3 will begin test operations in late 1985. During these periods, PNM estimates that its share of Palo Verde will generate 600 million KWh of test energy, which will become a part of the energy supply available on PNM's system. Consequently, the fuel consumption of PNM's other generating units and purchased power costs would be reduced substantially. PNM intends to use this test energy to meet firm

[1] The Cities of Gallup and Farmington, New Mexico, Plains Electric Generation and Transmission Cooperative, Inc., Texas-New Mexico Power Company, and the Department of Energy at Los Alamos, New Mexico (DOE). PNM no longer serves DOE as a wholesale customer; accordingly, that rate schedule change is moot. See Attachment for rate schedule designations.

[2] PNM has a 10.2% (approximately 390 MW) ownership interest in Palo Verde.

customer requirements as well as to make off-system sales.

PNM contends that, since it is not recovering capital costs associated with Palo Verde construction work in progress (CWIP) through base rates, the savings due to test energy should not automatically flow through the FAC to wholesale customers, as such treatment is inconsistent with the Commission's Uniform System of Accounts, Electric Plant Instructions, section 3, Paragraph 8 (18 CFR 101). PNM states that the fair value of test energy will be charged through the FAC and used to offset the cost of construction of Palo Verde. Under PNM's proposed FAC, test energy will be first sold and dispatched to independent purchasers without affecting the fuel adjustment clause;[3] the remaining test energy will then be available to PNM as a system resource. The company proposes an effective date of June 12, 1985, for all customers except for the City of Gallup. With respect to the City of Gallup, PNM proposes an effective date of September 2, 1986, pursuant to the terms of the settlement approved by the Commission in Docket No. ER83-299-000, 27 FERC ¶ 61,396 (1984). The utility would continue to capitalize for later collection from the city fees for disposal of spent nuclear fuel or radioactive waste from the date of commercial operation of Unit 1 until September 2, 1986. Accordingly, PNM requests waiver of the notice requirements. In addition, PNM requests waiver of the requirement of § 35.14(a)(9)(ii) of the regulations (18 CFR 35.14(a)(9)(ii)) to the extent it is applicable. That provision requires an electric utility which proposes to change its FAC to provide full cost of service data unless it has had a rate approved by the Commission within the past year. PNM states that such information is not relevant to its filing. To the extent necessary, the company incorporates by reference the Period I and II statements filed in Docket No. ER83-299-000.[4]

Notice of the Company's filing was published in the Federal Register, [5] with comments due on or before July 29, 1985.

Timely motions to intervene were filed by Texas-New Mexico Power Company (TNP) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), both of which request suspension of the proposed FAC modification and a hearing. An untimely motion to intervene was filed on July 30, 1985, by the Cities of Gallup and Farmington, New Mexico (Cities) which also request suspension. The intervenors challenge PNM's method of calculating the value of test energy, as well as PNM's proposal to capitalize spent nuclear fuel disposal costs prior to commercial operation. Plains objects to PNM's proposed effective date. Presumably, the savings associated with test energy have been passed thorugh to PNM's wholesale customers since June 12, 1985. Thus, a surcharge would allegedly be needed in order to recoup the difference between actual and "fair value" energy costs from June 12 until the present. Plains argues that a surcharge would charge future customers for benefits received by past customers and, further, would, would constitute retroactice ratemaking.

The Cities contend that Gallup's rates cannot be modified prior to the time of a final Commission order. Thus, the filing should not become effective as to Gallup until either September 2, 1986, or the date of Commission approval of the proposed changes, which ever occurs later.

On August 12, 1985, PNM filed a timely response to the motions to intervene. While PNM does not oppose the intervention of Plains, TNP, or the Cities, the company denies that either suspension or a hearing is warranted. In support, the company disputes the allegations contained in the intervenors' pleadings. PNM states that any change in rate to Gallup may become effective only after Commission approval, although it believes that such an order would be issued prior to September 2, 1986.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make TNP and Plains parties to this proceeding. Furthermore, we find that good cause exists to grant the Cities' untimely intervention, given the interests of the constituencies which they represent, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

With respect to PNM's prposed treatment of test energy in its fuel adjustment clauses, we have previously accepted several similar applications. In *Pennsylvania Power and Light Co., (PP&L)* Opinion No. 176, 23 FERC ¶ 61,395 (1983), we granted the company's request for waiver and approved the modifications to its fuel adjustment clauses. In that case we found that, absent waiver of the fuel clause regulations, current ratepayers would receive the benefits of the test energy in the form of decreased fuel costs. Future ratepayers would, however, incur all the costs associated with the test energy through higher rates which result from inclusion of such cost in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, future ratepayers who ultimely bear the costs associated with the facility undergoing testing will receive benefits through lower rates. This ratemaking would, the Commission determined, avoid problems of intergeneration inequality. PNM's proposed clause regarding test energy accomplishes the basic premise of *PP&L*, that present customers should not receive the full benefit of plants whose fixed costs will be borne by future customers. Therefore, we shall grant PNM's petition for waiver of the FAC regulations.[6]

The intervenors have alleged that PNM's method of calculating the fair value of test energy may be unreasonable. PNM's proposal is to value all test energy which displaces PNM generation at displacement costs and to value all test energy which displaces purchases at economy energy prices as determined by recent transactions. PNM's method differs from PP&L's in that it proposes to value test energy which displaces purchases at the average price for its economy energy sales and purchases for the latest prior four week period. PP&L valued all test energy at its replacement cost—*i.e.*, the cost which would have been incurred if the test energy were not available. In view of the intervenors' allegations, we shall set for hearing the question of whether PNM's method of determining fair value is just and reasonable.

PNM's proposed FAC includes language which specifically provides that fees for spent nuclear fuel disposal costs (SNFDC) will be included as a component of fuel cost. The company proposes to defer collection of these charges from Gallup until September 2, 1986.[7] We have previously held,

[3] In this case, the test energy will not be available for system use, and revenues will simply be credited against Palo Verde's investment.

[4] PNM submitted its filing in Docket No. ER83-299-000 on February 1, 1983.

[5] 50 F.R. 29,746 (1985).

[6] We agree with PNM that full cost of service data is unnecessary with respect to the company's filing and shall therefore waive the requirements of § 35.14(a)(9)(ii) of the Commission's regulations.

[7] Although PNM's petition requested that collection of SNFDC through the FAC commence upon commercial operation of Palo Verde, its proposed fuel clause provides for inclusion of SNFDC upon generation at Palo Verde. We shall require PNM to revise its proposed FAC to conform to its petition.

however, that SNFDC related to current nuclear fuel burn is includable in the FAC, and that utilities need not file revisions in costs related to current fuel burn, so long as they simply reflect DOE cost determinations.[8] Therefore, while PNM is free to include specific SNFDC language in its FAC, such is not required for cost collection under its existing FAC since SNFDC is merely a component of nuclear fuel expense. PNM should therefore revise the proposed FAC for Gallup to delete the September 2, 1986, effective date.

Our review of the company's filing indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61.189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. Accordingly, we find that a nominal suspension of PNM's rates is appropriate.

As noted, PNM requests a June 12, 1985, effective date for customers other than Gallup and therefore seeks waiver of the notice requirements. PNM has not shown good cause for the waiver. Presumably, the company was aware before the June 12 date that Palo Verde Unit 1 would commence producing test energy and could have filed a timely petition for waiver of the Commission's fuel clause regulations. Further, one of the affected customers objects to the request for waiver. Accordingly, we shall deny the request for waiver. As to TNP, Plains, and Farmington, we shall therefore accept PNM's filing, as modified, and suspend it for one day from sixty days after filing, to become effective on September 8, 1985, subject to refund. Since DOE is no longer a wholesale customer, we shall deem the filing withdrawn as to it. With respect to Gallup, that city is served pursuant to two rate schedules, A and B. Whereas Rate Schedule B permits unilateral rate changes, Rate Schedule A may only be changed as of the date of a final Commission order. However, pursuant to the terms of the settlement agreement approved in Docket No. ER83-299-000, PNM may not increase its rates to Gallup prior to September 2, 1986. Accordingly, we shall: (1) Accept PNM's proposed FAC under Rate Schedule A, as modified, for filing and suspend it for one day, to become effective, subject to refund, on September 3, 1986, or the date of a final Commission order in these proceedings, whichever is later; and (2) accept PNM's proposed FAC under Rate Schedule B, as modified, for filing and suspend it for one day to become effective on September 3, 1986, subject to refund. Because PNM has submitted its filing to Gallup more than 120 days in advance of the proposed effective date, we shall grant waiver of the Commission's advance filing requirements.[9]

The Commission orders

(A) The Cities' motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) PNM's request for waiver of § 35.14 of the Commission's regulations is hereby granted. Further, PNM's request for waiver of the cost of service requirements of § 35.14.14(a)(9)(ii) is granted.

(C) PNM's request for waiver of the prior notice requirement is hereby denied. The Commission hereby grants waiver of the advance filing requirements.

(D) PNM is ordered to refile its fuel adjustment clauses to indicate that fees for SNFDC will be included upon commercial operation of Palo Verde and to delete the provision for collection of fees for SNFDC from Gallup on a deferred basis.

(E) PNM's proposed fuel clauses are hereby accepted, as modified, for filing and suspended for one day, to become effective on September 8, 1985, subject to refund with respect to all customers other than Gallup and DOE. As to DOE, PNM's filing is deemed withdrawn. As to Gallup, the FAC under Service Schedule A, as modified, is accepted for filing and suspended for one day, to become effective, subject to refund, on Septemer 3, 1986, or the date of a final Commission order in this proceeding, whichever is later. The fuel adjustment clause under Service Schedule B, as modified, is acceped for filing and suspended for one day, to become effective on September 3, 1986, subject to refund.

(F) PNM is hereby ordered to file, within thirty (30) days of the end of testing of Palo Verde, the accounting entries made to effect its treatment of test power, including a detailed explanation of the derivation of all figures.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of PNM's proposed fuel clauses.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) Subdocket -000 of Docket No. ER85-608-000 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER85-608-001.

(J) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Public Service Company of New Mexico Rate Schedule Designations Docket No. ER85-608-000

Description: Modified Fuel Adjustment Clause

Designation	Other party
(1) Supplement No. 40 to Rate Schedule FPC No. 31 (Supersedes Supplement No. 34).	Plains Electric Generation & Transmission Coop., Inc.
(2) Supplement No. 17 to Rate Schedule FPC No. 32 (Supersedes Supplement No. 16).	Texas-New Mexico Power Company.
(3) Supplement No. 5 to Supplement No. 3 to Rate Schedule FERC No. 51 (Supersedes Supplement No. 4 to Supplement No. 3).	City of Farmington.
(4) Supplement No. 22 to Rate Schedule FPC No. 2 (Supersedes Supplement No. 20).	City of Gallup—Service Schedule A.
(5) Supplement No. 23 to Rate Schedule FPC No. 2 (Supersedes Supplement No. 21).	City of Gallup—Service Schedule B.

[FR Doc. 85-22007 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[8] *See Western Massachusetts Electric Co.*, 24 FERC ¶ 61.278 (1983).

[9] *See* 18 CFR 35.3 (1984).

[Docket No. ER85-710-000]

Public Service Electric and Gas Co.; Filing of Initial Rate Schedule

September 10, 1985.

The filing Company submits the following:

Take notice that on August 27, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an initial rate schedule to provide transmission service to the Borough of Park Ridge (Park Ridge). The Rate Schedule provides for a monthly transmission service charge of $1.35 per kilowatt for the delivery by Public Service of Park Ridge's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Park Ridge.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 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. 85-22008 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-715-000]

Public Service Electric and Gas Co.; Filing of Initial Rate Schedule

September 6, 1985.

The filing Company submits the following:

Take notice that on August 28, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an initial rate schedule to provide transmission service to the Borough of Milltown (Milltown). The Rate Schedule provides for a monthly transmission service charge of $2.45 per kilowatt for the delivery by Public Service of Milltown's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Milltown.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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. 85-22009 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS66-84, et al.]

E.E. Reigle dba Richmond Drilling Co.; Applications for Small Producer Certificates [1]

September 9, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date Filed	Applicant
CS66-84	Aug. 14, 1985 [1]	E. E. Reigle dba Richmond Drilling Co., First National Bank Building, P.O. Box 150, Midland, Texas 79702.
CS77-669-001	Aug. 29, 1985	Tumbleweed Production Co., P.O. Box 3362, Borger, Texas 79007.
CS85-95-000	Aug. 9, 1985	Dexco, Inc., P.O. Box 1089, Covington, Louisiana 70434.
CS85-97-000	Aug. 16, 1985	Bailey Balken-No. 1009—1509 Main St., Dallas, Texas 75201.
CS85-98-000	Aug. 26, 1985	Risa Energy Corporation, P.O. Box 2791, Corpus Christi, Texas 78403.
CS85-99-000	Aug. 22, 1985	Meadowbrook Oil Corporation of Oklahoma, Inc., Judith M. Dean, Alan H. Dean, Michael D. Dean, Lara M. Dean, John R. Dean, Leslie Henshaw & Rayford C. Bowen, 3612 South Epperly Drive, Del City, Oklahoma 73115.
CS85-100-000	Aug. 30, 1985	ENEX Oil Gas Income Program II, (ENEX Resources Corporation, General Partner), One Kingwood Place, Suite 205, Kingwood TX 77339.
CS85-101-000	Sept. 3, 1985	J. Carter Henson, 42 Bendwood, Sugar Land, Texas 77478.
CS85-102-000	do	David K. Spradlin dba S.E. Production Company, P.O. Box 755, Hobbs, New Mexico 88241.
CS85-103-000	do	B.L.G. Petroleum, Inc., P.O. Box 10888, Midland, TX 79702.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS85-104-000	do	J.R. Spiehler, Jr., P.O. Box 51353, Lafayette, Louisiana 70505

[1] By letter dated August 6, 1985, Applicant request that its certificate be amended to include the following persons and/or entities as certificate co-holders: R. Clark McDonald and C. B. L. M. Corporation; B. J. Tate Corporation and Betty J. Tate Living Trust; Mickey J. Stipe and ITX Corporation; E. E. Riegle, Edward E. Riegle-Trustee for Violet H. Riegle, dec., Edward Gordon Riegle, Edward Gordon Riegle, Trustee for Riegle-Williams Trust; Caroline Riegle Williams and C. J. Williams & Co. (a nominee partnership), E. Bradford Williams, indiv., E. Allan Williams, indiv.; Eric John Riegle; and Karl Edward Riegle and Randal Kurt Riegle.

[FR Doc. 85-22017 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-599-000]

Derald Schnabel; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 9, 1985.

On July 11, 1985, Derald Schnabel (Applicant), of P.O. Box 479 Parkston, South Dakota 57366 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. Supplemental information was filed on August 30, 1985 to complete the application.

The 3.5 kilowatt wind facility is located in Newton, Iowa.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22020 Filed 9-12-85; 8:45am]
BILLING CODE 6717-01-M

[Docket No. G-8837-005, *et al.*]

Shell Offshore Inc.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

September 9, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-8837-005, D, Aug. 28, 1985	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Tennessee Gas Pipeline Company, Halter Island Field, Terrebonne Parish, Louisiana.	(1)	
G-11373-001, Aug. 26, 1985	Mobil Oil Exploration & Producing Southeast, Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, Greenwood-Waskom Field, Caddo Parish, Louisiana.	(2)	
CI65-1053-001, D, Aug. 22, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Northern Natural Gas Company, Morrison Ranch Field, Roberts County, Texas.	(3)	
CI67-41-000, Aug. 26, 1985	Sun Exploration and Production Company	Northern Natural Gas Company, Mocane-Laverne Area Field, Ellis County, Oklahoma.	(4)	
CI67-1085-000, D, Sept. 3, 1985	Sun Exploration and Production Company	National Fuels Corp. & Oklahoma Natural Gas Gathering Corp. (now Ringwood Gathering Company), Ringwood Field, Major County, Oklahoma.	(5)	
CI67-1085-001, D, Sept. 3, 1985	Sun Exploration and Production Company	National Fuels Corp. & Oklahoma Natural Gas Gathering Corp. (Ringwood Gathering Company), Ringwood Field, Major County, Oklahoma.	(6)	
CI68-966-000, D, Aug. 30, 1985	Sun Exploration and Production Company	Panhandle Eastern Pipe Line Co., Dover-Hennessey Field, Kingfisher and Garfield County, Oklahoma.	(7)	
CI74-334-002, Sept. 3, 1985	Chevron, U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Southern Natural Gas, Unknown Pass, Orleans Parish, Louisiana.	(8)	
CI77-400-002, D, Sept. 3, 1985	Texaco Inc., P.O. Box 52332, Houston, TX 77052	United Gas Pipeline Company and Southern Natural Gas Company, Eugene Island Blocks 26, 27, 47, Offshore Louisiana.	(9)	
CI85-634-000 (CS71-646), B, Aug. 19, 1985.	Ladd Petroleum Corporation, 830 Denver Club Building, Denver, Colorado 80202.	Transcontinental Gas Pipe Line Corp., Brazos, E., Brazos Block 409-L, Offshore Texas.	(10)	
CI85-635-000 (CI74-52), B, Aug. 19, 1985.	Chevron U.S.A. Inc.	Natural Gas Pipeline Company, East Cameron Block 257, OCS-G-2041, East Cameron Block OCS-G-2128, Offshore Louisiana.	(11)	
CI85-636-000 (CS80-182), B, Aug. 21, 1985.	Agarita Oil Company, P.O. Box 333, Corpus Christi, Texas 78403.	United Gas Pipe Line Company, North Fort Merrill Field, Live Oak County, Texas.	(12)	
CI85-637-000 (CS82-7-000), B, Aug. 21, 1985.	Kaiser Energy, Inc., P.O. Box 8, Ravenswood, WV 26164.	Gas Transport, Inc., Silverton Field, Jackson County, West Virginia.	(13)	
CI85-638-000, A, Aug. 26, 1985	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Williston Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming.	(14)	14.73

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI85-639-000 (G-2789), B, Aug. 22, 1985.	Amoco Production Company, Post Office Box 3092, Houston, Texas 77253.	Texas Gas Pipe Line Corporation, Big Hill Field, Jefferson County, Texas.	(1)	
CI85-640-000, B, Aug. 29, 1985	Hermes Fairman, et al. (Fairman Drilling Co.), P.O. Box 288, Dubois, PA 15801.	New York State Nat. Gas Corp. (Cons. Gas Trans. Corp.); Hall Chase Well #1, Benezette Township, Elk County, Pennsylvania.	(15)	
CI85-641-000, B, Aug. 29, 1985	Hermes H. Fairman, et al. (Fairman Drilling Co.)	New York State Nat. Gas Corp. (Cons. Gas Trans. Corp.); Eugene Dollinger, et al. Well #2, Benezette Township, Elk County, PA.	(16)	
CI85-643-000, A, Sept. 3, 1985	Exxon Corporation, Post Office Box 2180, Houston, Texas 77252-2180.	Texas Eastern Transmission Corporation, South Pass Blocks 93 & 94, Offshore Louisiana.	(17)	
CI85-644-000 (CS71-391), B, Sept. 3, 1985	Jet Oil Company, 800 Mid-Continent Bldg., Tulsa, Oklahoma 74103.	Transcontinental Gas Pipe Line Corp., Mosquito Bay Field, Terrebonne Parish, Louisiana.	(18)	
CI85-645-000 (CS77-40), B, Sept. 3, 1985	Primary Fuels, Inc. (Succ. in Int. to ACF Petroleum Company, Inc.), P.O. Box 569, Houston, Texas 77001.	Transco Gas Pipe Line Corporation, Courtney No. 1 Well, Bassfield Field, Jefferson Davis County, Mississippi.	(19)	
CI85-646-000 (G-7146), B, Sept. 3, 1985.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	United Gas Pipeline Company, Keeran Field, Victoria County, Texas.	(20)	
CI85-647-000 (CI79-200), B, Sept. 3, 1985	Exxon Corporation	Columbia Gas Transmission Corp., South Pass Blocks 93 and 94, Offshore Louisiana.	(21)	
CI85-649-000, Sept. 4, 1985	MGPC, Inc., Suite 1600, 10880 Wilshire Boulevard, Los Angeles, California 90024.	MIGC, Inc., Gillette Gas Plant, Campbell County, Wyoming.	(22)	

[1] By agreement dated March 7, 1985, Shell Offshore Inc. has farmed-out certain acreage to Crescent Drilling & Development Inc., Peacock Oil and Gas Properties, Trafalgar House Oil and Gas Inc. and Odyssey Gulf Coast Partners 83, Ltd.
[2] Unit well plugged and abandoned and unit removed from contract commitment.
[3] Assignment of Mary T. Morrison "D" Unit to Kaiser-Francis Oil Company.
[4] Property No. 853246, Carl Long Unit 1-26, F.B. Long et ux. Lease No. 922741 sold to Kaiser-Francis Oil Company.
[5] Property No. 676328, Sawyer Unit, was sold to Earl R. Bruno.
[6] Several properties sold to Entex Petroleum, Inc.
[7] Sale of properties by Partial Assignment and Bill of Sale to Spess Oil Company, Inc.
[8] Applicant is filing to change delivery point.
[9] On March 29, 1985, federal lease OCS-G-0312 (Eugene Island Block 27) was surrendered to the MMS because of the discontinuance of production operations. The last well on Block 27 ceased production on October 8, 1984.
[10] All production related to the referenced field has ceased. The field is depleted and no further production is planned. The purchaser wishes to remove the pertinent facilities related to this well.
[11] Production has ceased from wells, and the leases have expired.
[12] Reserve depleted.
[13] Purchase determined the purchase price of gas supplies from the Silverton Field is greater than the price for which it can purchase gas along its pipeline network and it is therefore willing to release the Silverton Field gas from the Gas Purchase Agreement.
[14] Applicant is filing under Rollover Gas Purchase Contract dated 11/30/84 (Original Contract between Shell Oil Company and Montana-Dakota Utilities Co., dated 2/26/64, ratified by Cities Service 4/22/64).
[15] All production from the dedicated property has ceased and all wells have been plugged and abandoned. The primary term of the gas sales contract expired June 1, 1974, and said contract was cancelled on May 16, 1980.
[16] Natural gas reserves depleted.
[17] Applicant proposes to sell gas under a contract dated July 24, 1985.
[18] The State J.M. Smyth #1 well was plugged and abandoned June 1979. The purchaser wishes to remove the pertinent facilities related to this well.
[19] All production related to the Courtney No. 1 well has ceased and the well has been plugged and abandoned.
[20] Production has ceased and no further prospects for development exists.
[21] The Gas Sales and Purchase Agreement between Exxon and Columbia expired by its own terms on January 14, 1984. Columbia has advised Exxon that, due to the price and take requirements under R.S. No. 650, Columbia no longer desires to purchase the subject gas and will support Exxon's abandonment application.
[22] Initial application for exchange of natural gas filed under a Gas Exchange Agreement dated August 15, 1985.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-22016 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-717-000]

Southern Company Services, Inc.; Filing of Service Schedule R to an Interchange Contract Between Gulf States Utilities Company and Southern Companies

September 6, 1985.

The filing Company submits the following:

Take notice that on August 29, 1985, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing Service Schedule R to an interchange contract between Gulf States Utilities Company ("GSU") and Southern Companies.

Service Schedule R provides for non-firm energy sales from Southern Companies to GSU and allows GSU to purchase such energy in substitution for energy under a unit power sales agreement among the parties. The price of energy under Service Schedule R will be at the incremental cost of Southern Companies. Southern Companies and GSU request that the new service Schedule be allowed to become effective as of August 2, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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. 85-22010 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-666-000]

Syracuse City School District; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 9, 1985.

On August 26, 1985, Syracuse City School District (Applicant), of 644 Madison Street Syracuse, New York 13210 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility is located at the Nottingham High School, in Syracuse, New York. The facility will consist of a natural gas fired engine. The steam and heat recovered from the facility will be used for domestic hot water and swimming pool and space heating. The electric power production capacity of the facility will be 200 kW. The primary energy source for the facility will be natural gas. The installation of the

facility is expected to begin in the spring of 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22021 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-718-000]

Tampa Electric Co.; Filing

September 6, 1985.

The filing Company submits the following:

Take notice than on August 29, 1985, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and the City of Vero Beach, Florida (Vero Beach). Tampa states that Service Schedule X is submitted for including as a supplement under the existing agreement for interchange service between Tampa and Vero Beach, designated as Tampa's Rate Schedule FERC No. 18.

Tampa proposes an effective date of September 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Vero Beach and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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. 85-22011 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-9-006]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

September 10, 1985.

Take notice that on September 9, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), withdrew its July 26, 1985 PGA filing and tendered for filing Substitute Fourteenth Revised Sheet No. 21 to be effective July 1, 1985 to September 8, 1985 and Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on September 9, 1985.

Tennessee states that the withdrawal of the July 26, 1985 PGA filing and these revised tariff sheets are a result of the Commisssion's rejection in its Opinion No. 240 of a Settlement Agreement filed in Docket Nos. RP80-97, et al. Rejection of the Settlement requires that Tennessee impose a surcharge to recover its unrecovered purchased gas cost account balance which in turn will preclude Tennessee from maintaining the weighted average cost of gas reflected in the July 26, 1985 PGA filing. Accordingly, Substitute Fourteenth Revised Tariff Sheet No. 21 maintains the rates established by Tennessee's May 29, 1985 PGA filing as modified by the imposition of a $1.2532 per dth surcharge. Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective September 9, 1985 reflects rates based on a weighted average cost of gas of $3.1736 per dth and a surcharge of $1.2532 per dth.

Tennessee has also submitted for filing tariff sheets reflecting two alternatives for recovery of its deferred account balance. The first of these alternatives is a direct billing mechanism. Under this alternative Tennessee states that its customers will be billed in twelve equal monthly installments for their proportionate share of the balance in Tennessee's Unrecovered Purchased Gas Cost Account. Each customer's share of the balance is reflected in Appendix B to Tennessee's filing and is based on a ratio of: (a) The individual customer's purchases during the period January, 1983 through March, 1985 to (b) the total of all customer's purchases during this period. Tennessee states that if this alternative is accepted by the Commission, it should also accept Second Alternative Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on the date of the Commission's order, which tariff sheet reflects a weighted average cost of gas of $2.38 per dth and a $0 surcharge.

The second alternative proposed by Tennessee is a twenty-four month amortization of the deferred account balance beginning July 1, 1985. To implement this proposal Tennessee has submitted for filing Alternate Substitute Fourteenth Revised Tariff Sheet No. 21 to be effective July 1, 1985 and Alternative Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on the date of the Commission's order, both of which reflect a surcharge of 15.89[per dth and a weighted average cost of gas of $2.38 per dth].

Tennessee requests waiver of the Commission's regulations to the extent necessary to accept the tariff sheets effecting one of the three alternate proposals described above. 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 Regulatory Commission, 825 North Capital Street, NE., Washington, D.E. 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 September 17, 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. 85-22012 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-47-000]

Trend Exploration Limited; Petition for Adjustment

Issued: September 10, 1985.

Take notice that on July 29, 1985, Trend Exploration Limited filed with the Commission a petition for adjustment

under section 502(c) of the Natural Gas Policy Act of 1978.[1] The petition concerns refunds owed Trends' purchaser, Houston Pipeline Company, pursuant to Commission Order No. 399,[2] relating to refunds resulting from Btu measurement adjustments. Trend requests forgiveness of certain refunds to Order No. 399–A,[3] which provides for consideration of petitions for waiver of such refunds under certain circumstances.

Trend states that these refunds, totaling approximately $560, are attributable to certain royalty owners; that it has billed such owners twice; that the two largest owners have been contacted by phone as well; and that such collection efforts have been unsuccessful.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22013 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–712–000]

West Penn Power Co. and Pennsylvania Electric Co. Tariff Change

September 6, 1985

The filing Company submits the following:

Take notice that West Penn Power Company ("West Penn") and Pennsylvania Electric Company ("Penelec") on August 28, 1985, tendered for filing proposed changes in their FERC Electric Service Tariffs, specifically, an Addendum constituting Supplement No. 3 to West Penn Rate Schedule FERC No. 17, Supplement No. 3 to Penelec Rate Schedule FERC No. 43, and Supplement No. 1 to Penelec Rate Schedule FERC No. 44. The proposed changes would increase revenues from jurisdictional sales and service by $1,839.46 to West Penn and $230.28 to Penelec, based on the twelve-month period ended May 31, 1985, and would terminate an emergency interconnection no longer deemed necessary by West Penn and Penelec.

The changes proposed are necessary in order to reflect increased costs since the Rate Schedules became effective in 1957 and 1964 and to terminate an interconnection point which is no longer needed.

A copy of the filling was served upon the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 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. 85–22014 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–716–000]

Yankee Atomic Electric Co.; Filing

September 6, 1985.

Take notice that on August 29, 1985, Yankee Atomic Electric Company (Yankee) tendered for filing requisite copies of an executed Amendment to the Yankee Atomic Power Contract. This Amendment incorporates all of the amendments described in Yankee's Offer of Settlement and Explanatory Statement and in the Commission's February 1, 1985 Order in this matter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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. 85–22015 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM83–53–002]

Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978; Petition for Waiver

September 9, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of petition for waiver.

SUMMARY: On July 26, 1985, El Paso Natural Gas Company filed a petition for waiver of the Commission's regulations requiring payment of interest on refunds of overcollections occuring after stripper well disqualifications. The notice requests protests or interventions on this petition.

COMMENT DATE: October 15, 1985.

ADDRESS: Protests and interventions on this petition must be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83–53–002. An original and fourteen copies should be filed.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8400.

SUPPLEMENTARY INFORMATION: On July 26, 1985, El Paso Natural Gas Company (El Paso), an interstate pipeline, filed a petition for waiver of the Commission's regulations requiring payment of interest on refunds of over-collections occurring after stripper well disqualifications.[1] El Paso also seeks waiver of the requirement set forth in 18 CFR 154.38(d)(4)(VII), as amended by Order No. 423,[2] that it include in its Purchased Gas Adjustment filings a report of those refunds, including the interest collected.

El Paso monitors production from the thousands of stripper wells from which it purchases gas, and has a computerized system for promptly recouping overpayments made after a stripper well's disqualification. However, its computerized system

---

[1] 15 U.S.C. 3301, *et seq.*

[2] 28 FERC ¶ 61,379 (1984).

[3] 29 FERC ¶ 61,254 (1984).

[1] 18 CFR 270.101(e) (1984).

[2] 50 FR 23969 (1985).

cannot calculate the interest owed it. Accordingly, on January 18, 1985, the Director of the Office of Pipeline and Producer Regulation granted El Paso a staff adjustment permitting it not to collect such interest. The Director also required that El Paso file reports identifying the refunds every three months.[3]

In Order No. 423, issued May 30, 1985, the Commission restated that interest should be charged on amounts recouped by billing adjustments, in addition to imposing new reporting requirements on interstate pipelines. El Paso is concerned that Order No. 423 could be read as superseding the Director's January 18, 1985 order. Accordingly, it seeks waiver of the regulations promulgated by Order No. 423 to the extent necessary to keep the Director's order in effect.

Within thirty days of publication in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. If you wish to become a party, you must file a petition to intervene. See Rules 214 or 211.[4]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22027 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 16 Through August 23, 1985

During the Week of August 16 through August 23, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

September 5, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 16 through Aug. 23, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 19, 1985	Haiston Oil Co., Inc., Scottsbluff, NE	HEE-0161	Exception to the reporting requirements. If granted: Haiston Oil Company, Inc. would no longer be required to file Form 782B "Resellers/Retailers Monthly Petroleum Product Sales Reports".
Aug. 20, 1985	LBM Distributors, Inc., Lafayette, LA	HEE-0162	Exception to the reporting requirements. If granted: LBM Distributors, Inc. would not be required to file Form 782B "Resellers/Retailers Monthly Petroleum Product Sales Report".
Aug. 21, 1985	Economic Regulatory Administration, Washington, DC	HRR-0112	Request for Modification/rescission. If granted: The July 25, 1985 Remedial Order (Case No. BRO-1144) issued to Energy Reserves Groups, Inc. would be modified regarding the refund disposition provisions.
Aug. 23, 1985	State of Minnesota, St. Paul, MN	HFA-0305	Appeal of an information request denial. If granted: The State of Minnesota would receive access to certain DOE information concerning radioactive waste.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 16 to Aug. 23, 1985]

Date received	Name of refund proceeding/name of refund application	Case No.
08/19/85	Aminoil/Linda Jo's Bottle Gas Co	RF139-84
08/19/85	Aminoil/Carlina Wholesales Gas Co	RF139-85
08/19/85	Aminoil/White's Gas & Appliance	RF139-86
08/19/85	Husky/Crestview Service	RF161-12
08/19/85	Arkansas Louisiana/Halliburton Co	RF154-7
08/19/85	Aminoil/Edington LP Gas, Inc	RF139-87
08/19/85	Inland/Ray Oil Company	RF176-4
08/19/85	Husky/Chem Oil & Tire Company	RF161-13
08/20/85	LARCO/Edlin Oil Company	RF112-175
08/20/85	LARCO/Myers Oil Company	RF112-174
08/20/85	LARCO/University Gas	RF112-173
08/20/85	LARCO/Allen's, Inc	RF112-172
08/20/85	LARCO/G.S. Oil	RF112-171
08/20/85	LARCO/Service Oil Company	RF112-170
08/20/85	Red Triangle/Waldrum's Gulf Service	RF178-11
08/20/85	LARCO/Coutts & Company	RF112-178
08/20/85	LARCO/Joehem Oil Company	RF112-177
08/20/85	LARCO/Mace Tire & Oil Company	RF112-176
08/22/85	Aminoil/Freeman's Gas Service	RF139-88
08/22/85	Willis/Matz Mobil Service	RF41-23
08/22/85	Aminoil/Pennington LP Gas Company	RF139-89
08/23/85	Inland/Raymond Cornwell	RF176-5
08/23/85	Gulf/Oren S. Myers Gulf	RF40-3041
08/23/85	Southern Union/Union Carbide Corp	RF182-2
08/23/85	St. James/George Mizhir & Sons	RF180-20
08/23/85	St. James/Skins Oil Company	RF180-19
08/23/85	Aminoil/Rural Gas Company	RF139-90
08/23/85	Armour/Golden Gate Petroleum Co	RF167-6

[FR Doc. 85-21899 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

[3] 30 FERC ¶62,075.

[4] 18 CFR 385.214 or 385.211 (1984).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $66,678.29 (plus accrued interest) obtained as the result of three separate consent orders which the DOE entered into with Big Bend Truck Plaza (Case No. HEF-0036), located in Tallahassee, Florida; Cougar Oil, Inc. (Case No. HEF-0057), located in Selma, Alabama; and Gate Petroleum, Inc. (Case No. HEF-0077), located in Jacksonville, Florida. The funds will be available to customers that purchased products specified in the consent orders during the relevant consent order periods.

DATE AND ADDRESS: Applications for refund of a portion of a consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Big Bend, Cougar, or Gate Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to three separate consent orders entered into by Big Bend Truck Plaza, located in Tallahassee, Florida; Cougar Oil, Inc., located in Selma, Alabama; and Gate Petroleum, Inc., located in Jacksonville, Florida (collectively referred to as "the consent order firms") which settled possible pricing violations with respect to the firms' sales of certain refined petroleum products during the periods specified in the consent orders. Under the terms of the consent orders, a total of $66,678.29 has been remitted by the consent order firms and is being held in three separate interest-bearing escrow accounts pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of three consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by the consent order firms was issued on January 14, 1985. 50 FR 4742 (February 1, 1985).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the decision indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased from a consent order firm during the relevant consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Special Refund Procedures

Names of Firms: Big Bend Truck Plaza, Cougar Oil, Inc., Gate Petroleum, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0036, HEF-0057, HEF-0077.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with three separate consent orders entered into with Big Bend Truck Plaza (Big Bend), located in Tallahassee, Florida; Cougar Oil, Inc. (Cougar), located in Selma, Alabama; and Gate Petroleum, Inc. (Gate), located in Jacksonville, Florida (these three firms shall be referred to collectively in this Decision as "the consent order firms").

I. Background

The consent order firms are "reseller-retailers" of refined petroleum products as that term was defined at 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate consent order with the DOE in order to settle its disputes with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products. None of the consent orders contains an admission by the consent order firm or a finding by the DOE that the firm violated the price regulations. Pursuant to these consent orders, the firms agreed to pay specified amounts to the DOE in settlement of their potential liability.[1] In addition, Big Bend also agreed in its consent order to refund money to one customer directly. *See* Appendix A. The firms' payments, which total $66,678.29, are currently being held in separate escrow accounts pending distribution by the DOE. Specific information regarding the individual firms and the consent orders is set forth in Appendices A-C to this Decision.

On January 14, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who are injured by a consent order firm's alleged overcharges. *See Big Bend Truck Plaza et al.*, Case Nos. HEF-0036 *et al.* (January 14, 1985) (proposed decision), 50 FR 4742 (February 1, 1985). In the PDO, we described a two-stage process for distribution of the consent order funds. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by a consent order firm's alleged overcharges during the period covered by the applicable consent order. We stated that any money available after payment of

[1] Both the Gate and Cougar consent orders cover sales of motor gasoline, including unleaded gasoline, during the consent order periods. Subsequent to the signing of the Gate consent order, the DOE stated that it would not seek to give effect to the portion of the unleaded gasoline rule, 10 CFR 212.112(b) (2) and (3), on which Gate's alleged overcharges in sales of unleaded gasoline were based. *See* DOE Ruling 1981-3, 2 Fed. Energy Guidelines ¶ 16,660. In a letter accompanying full payment of the consent order amount, Gate contended that Ruling 1981-3 totally deregulated sales of unleaded gasoline and that it should not be required to pay the portion of the consent order amount attributable to sales of unleaded gasoline.

This contention is without merit. As we stated in the PDO, during the Gate consent order period unleaded gasoline was subject to the reseller price rule at 10 CFR 212.93. PDO at 8 (citing *Leese Oil Co.*, 10 DOE ¶ 83,015 at 88,134 (1982)). By signing the consent order, Gate therefore was relieved of liability for possible violations of the price rule in its sales of unleaded gasoline. Accordingly, we reject Gate's contention.

refunds to eligible claimants in the first stage would be distributed through a second-stage process and that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage

In response to the PDO, we received comments from the State of Florida. Those comments, however, address second stage procedures to be used in distributing any funds which remain in the Big Bend escrow account after we have acted on all claims filed by customers of Big Bend. The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the refund process. We will not address Florida's comments at this time, since our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*).

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the three consent order funds. We will therefore grant the ERA's petition and assume jurisdiction over these funds.

III. Determination of Injury and Refund Amounts

Potential claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of the products covered by the consent orders, and (2) firms, individuals, or ogranizations that were consumers (end-users) of those products. The products purchased by claimants will have been purchased either directly from a consent order firm or from another firm in a chain of distribution leading back to that firm. As explained below, the consent order funds shall be distributed to claimants who demonstrate satisfactorily that they have been injured by a consent order firm's alleged overcharges.

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of banks will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of consent order products made by each consent order firm during the relevant consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we shall 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:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in these cases are used to permit claimants to participate in the refund process without incurring disproportionate expenses and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. In the present cases, the audit files do not contain specific alleged overcharge amounts to particular customers that might serve as a basis for allocating refunds. Therefore, the volumetric approach is appropriate in these cases. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). In determining the per gallon volumetric factor, each consent order amount has been divided by the estimated total volume of refined petroleum products (covered by the consent order) which the consent order firm sold during the consent order period. The volumetric factors for the consent order firms are specified in the Appendices to this Decision. Refunds will be calculated by multiplying the volumetric factor by the total amount of the products that an applicant purchased from a consent order firm during the relevant consent order period. The interest which has accrued on the money in each escrow account will be distributed to each successful claimant in proportion to its refund amount.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the consent orders that are the subjects of these proceedings is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (*Uban*). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to

utilize its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered products from the consent order firms and were in the chain of distribution where the alleged overcharged occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption elimination the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] In the present cases, where the volumetric refund amounts are fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

We shall also adopt, our proposed finding that end-users, or ultimate consumers, including businesses that are unrelated to the petroluem industry, were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroluem industry, members of this group generally were not subject to price controls during the consent order periods, and they were not required to keep records which justfied selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroluem products on the final prices of non-petroluem goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of petroluem products covered by the consent orders and sold by the consent order firms need only document their purchase volumes from a consent order firm in order to make a sufficient showing that they were injured by the alleged overcharges.

Finally, we are establishing a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban*, 9 DOE at 85,255; *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

Applications for refund will now be accepted from parties who purchased products from a consent order firm during the relevant consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR § 205.286. An application must be in writing, signed by the applicant, and specify the consent order fund to which it pertains and the appropriate OHA case number. *See* the Appendices to this Decision.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Big Bend, Cougar, or Gate Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of one of the consent order funds, the following subjects should be covered in Applications for Refund:

A. Each applicant should report its purchase volumes of the consent order product from the consent order firm by month for the period of time it is claiming it was injured by the alleged overcharges.

B. Each applicant should specify how it used the consent order product—i.e., whether it was a reseller or an end-user.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled. It should furnish OHA with quarterly bank calculations; [3]

(ii) Submit evidence to establish that it did not pass on the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. Each applicant should state whether it was a spot purchaser.

E. Each applicant should state whether it was in any way affilliated with the consent order firm.

F. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by the consent order firms listed in the Appendices to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of

[2] Two groups of purchasers shall be presumed not to have been injured by any overcharges, and will therefore be ineligible for refunds in this proceeding, even if the refunds to which they would otherwise be entitled under the volumetric presumption fall below the threshold level. First, resellers that were spot purchasers from a consent order firm will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its own customers the full amount of the firm's quoted selling price at the time of purchase. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchase(s) upon which the refund claim is based. Second, purchasers from a consent order firm that were affiliated with that firm in such a way that any refunds received by them would inure to the consent order firm shall be ineligible for refunds.

[3] The bank requirement for retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979. 44 FR 42542 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers after that date.

this Decision and order in the **Federal Register.**

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Big Bend Truck Plaza

Case Number: HEF-0036
Consent Order Date: January 21, 1980
Period Covered by Consent Order: November 1, 1973 through April 30, 1976
Consent Order Amount: $18,000
Consent Order Product: Diesel Fuel
Volume Sold during Consent Order Period: 5,894,547 gallons
Volumetric Amount: $0.00305 per gallon
Location of firm: Tallahassee, Florida, Lloyd, Florida

Identified Purchasers

Alterman Transport
A&S Trucking
American Scrap
B.C. McWharton
B.H. Harrison
Butler Brokerage
Cachat Brother Produce
Cain T. Bultman, Inc.
Colonial Fast Freight
Jon Cream
Cunningham Produce
Deabus Transit
Duval Lumber
Duvard Hamsby
E.T. Griffis
Florida Beef Producers
Florida Refrigerated Service
James Friday
Global Van Lines
Grant Tomato
Gustafsons
Howard Hall
T.R. Johnson
Magic City Products
Maxi Mart
Mid-Continent Systems, Inc.
Middletown Produce
New Truck Lines
Nu Car Carriers
Osborn Truck Lines, Inc.
Petroleum Carrier Corporation
Peturis Brothers
Republic Van Lines
John Riley
Seminole Asphalt
T&T Trucking
Terrys Dream Bayou
Watkins Metal Lines
Weathus Brothers
West Nebraska Express
Wilson Brothers

Special Information

The Big Bend Consent Order provided for a refund of $854.57 to the Georgia Power Company, which purchased Big Bend diesel fuel sold by Mid-Continent, Inc. a Big Bend customer, in January and November 1974. Since the Big Bend Consent Order has explicitly provided for restitution with respect to alleged overcharges by Big Bend in sales of Big Bend product ultimately sold to Georgia Power during the entire audit period, we have not included those volumes in establishing the per gallon refund amount to be made available in the Big Bend refund proceeding. In addition, Georgia Power Company shall be ineligible for any further refunds in this proceeding, and neither Mid-Continent, Inc. nor any of its any refunds based upon the specified January and November 1974 transactions.

Appendix B—Cougar Oil, Inc.

Case Number: HEF-0057
Consent Order Date: November 2, 1981
Period Covered by Consent Order: January 1, 1979 through December 31, 1979
Consent Order Amount: $18,678.29*
Consent Order Product: Motor Gasoline
Volume Sold: 13,113,608 gallons
Volumetric Amount: $0.00142 per gallon
Location of Firm: Selma, Alabama and other Alabama locations

Identified Purchases

Adams Grocery*
Ashley Market
John Bitts*
Blacks Service Station
Brodford Garage
Cross Service Station*
J.N. Edward*
Jack Edwards*
Nolan Edwards*
Garree Montgomery*
Harold Lancaster
Harrigan Lumber Company
Holman Garage*
Holman Grocery
Holder Union 76 Service Station
Ronnie Jordan
Lone Star Service Station*
Douglas McDinir
A.J. McDonnell*
Salter's Welding Shop
David Stacey*
Uriah Well and Supply Company
R.B. Williams Company*

Special Information

Purchasers from Southern Energy Company (SECO), a subsidiary of Cougar located in Monroeville, Alabama, will be eligible for refunds only based on purchases that took place from June 1979 through December 1979, since SECO was acquired by Cougar in June 1979. For similar reasons, purchasers from Sentell Oil, another Cougar subsidiary, will be eligible only for refunds based on purchases that took place from April 1979 through December 1979, and purchasers from Sturgis, a SECO subsidiary, will be eligible only for refunds for purchases occurring in December 1979.

Appendix C—Gate Petroleum, Inc.

Case Number: HEF-0077
Consent Order Date: October 15, 1981
Period Covered by Consent Order: April 1, 1979 through September 30, 1979
Consent Order Amount: $30,000
Consent Order Product: Motor Gasoline (including ethyl)
Volume Sold: 26,842,484 gallons
Volumetric Amount: $0.00112 per gallon
Location of Firm: Jacksonville, Florida (gasoline sold in Florida, Georgia, Virginia, Kentucky, Tennessee, South Carolina, North Carolina)

Identified Purchasers

Joyce Arbuthnot
Asbury's Trading Post
Dewitt Head
Dutch Grocery
James W. Ellis
Fralick's Service Station
Green Acres Country Store
H&H Petroleum Company
Robert Hatcher
Harold Heafner
Hi-Way Market
Lake Asbury
Martin Oil Company
Mayport Motor Parts
Moody's Fast Food
North Florida Motors
Possum Petroleum
Repey Petroleum
Wesco Petroleum
Woodman's Grocery
Wright Trucks

[FR Doc. 85-21904 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

*The amount specified in the Cougar consent order was actually $16,381.90. The amount Cougar actually paid includes interest charged to Cougar because the firm made its payments in installments.

*These purchasers were identified from 1973 sales invoices of SECO (See Special Information), a Cougar subsidiary. We are not certain that these purchases were Cougar customers during the audit period.

Issuance of Decisions and Orders; Week of July 29 Through August 2, 1985

During the Week of July 29 through August 2, 1985, the decisions and orders summarized below were issued with respect to applications for 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.

Implementation of Special Refund Procedures

Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, Lawrence H. Glover, 8/1/85; HEF-0035; HEF-0046; HEF-0047; HEF-0061

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $203,975.29 obtained as a result of Consent Orders entered into between the DOE and Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, and Lawrence H. Glover. The Decision sets forth refund application procedures for customers who purchased No. 2 heating oil from Bayside, motor gasoline form Butler, motor gasoline or No. 2 heating oil from Central, or propane from Glover during the firms' respective consent order periods. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Oneok, Inc., 8/2/85; HEF-0571

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained under a consent order with Oneok, Inc. formerly Oklahoma Natural Gas, and its subsidiary, ONG Exploration. The funds will be available to customers who purchased covered natural gas liquids and natural gas liquid products from five gas processing plants controlled by Oneok during the period August 1973 through January 1981.

Saber Energy, Inc. 7/30/85; HEF-0220

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained under a consent order with Saber Energy, Inc., and its subsidiaries, Saber Petroleum and Saber Refining. The funds will be available to customers who purchased covered petroleum products from Saber during the period August 1973 through January 1981.

Refund Applications

Gary Energy Corporation/Pargas, Inc. 8/1/85; RF47-7

This Decision and Order relates to a distribution of an escrow account fund remitted by Gary Energy Corporation pursuant to a consent order which Gary Energy entered into with the DOE. Pargas, Inc. in this proceeding claims a refund on the grounds that it purchased 1.7 million gallons of natural gas liquid products from Gary Energy during the consent order period. The Doe Found that Pargas experienced a competitive disadvantage as a result of its NGLP purchases from the consent order firm and granted Pargas a refund of $18,328, plus accrued interest. The refund equals a share of the consent order fund allocated to Pargas on the basis of the volume of the products the firm purchased.

Gary Energy Corporation/Swallow Oil Company, 7/31/85; RF47-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Swallow Oil Company, a reseller of Gary motor gasoline. Although the firm's purchases of Gary motor gasoline during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (TOGCO), Swallow elected to file its refund application is accordance with the presumption of injury and procedures for filing small claims outlined in the *TOGCO* decision. After examining the evidence and supporting data sumbitted by the firm, the DOE concluded that Swallow should receive a refund of $5,000 in principal and $505.76 of accrued interest, or a total of $5,5050.76.

Gulf Oil Corporation/City Coal Company of Sprinfield, et al., 8/1/85; RF40-00119 et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by retailers and resellers of Gulf covered petroleum products. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through the customers a cost reduction equal to the refund claimed. The applicants also indicated that they have purchased covered products directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $134,466.

Gulf Oil Corporation/Greyhound Lines, Inc. et al., 8/2/85; RF40-48 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by end-users of Gulf petroleum products. In considering the Applications, the DOE found that each end-user should receive a volumetric refund amount of $.00122, plus interest, for each gallon of Gulf petroleum products purchased by the end-user during the Gulf consent order period. The total amount of refunds granted in this proceeding was $239,068.

Dismissals

The following submissions were dismissed.

Company name	Case No.
Blue DOT Oil Co	RF73-9
Crown Central Petroleum Corp	HRD-0196, HRH-0196, HRD-0210
Grover Wilson	RF73-3
Moroney Oil Co	RF73-6

Kansas-Nebraska Natural Gasoline Company, Arapaho Petroleum Inc., Eagle Petroleum Company, Peoples Energy Corporation/Empire Gas Corporation, 8/2/85; RF113-6; RF119-3; RF121-3; RF142-2

Empire Gas Corporation filed Applications for Refund with respect to funds made available by four firms that entered into consent orders with the DOE: Kansas-Nebraska Natural Gasoline Company, Arapaho Petroleum, Inc., Eagle Petroleum Company and Peoples Energy Corporation. Empire indicated that it has purchased propane from four firms that had been identified as having been propane customers of the four consent order firms. The DOE found that empire, as an indirect purchaser, had failed to establish that it had actually purchased product that was sold by a consent order firm or shown the percentage of their own propane purchases that each of its suppliers made from the four consent order firms. The DOE therefore found that Empire had not shown that it was in the "chain of distribution" of covered products sold by a consent order firm. Accordingly, Empire's Application for Refund was denied.

Shelter Creek Chevron, Ken Betts/Bubble Machine, Hal Abel's Chevron, Pacifica Shell and Manor Shell/United States Postal Service, 7/31/85; RF163-1; RF164-1; RF165-1; RF166-1

The United States Postal Service filed four Applications for Refund seeking a portion of the funds obtained by the DOE through consent orders entered into by the agency and four motor gasoline retailers. In considering the applications the DOE found that in each case the U.S. Postal Service purchased a relatively small amount of gasoline from the four retailers. Using the volumetric allocation methodology, the DOE determined that the U.S. Postal Service's allocable share in each case was well below the presumption of injury level of $5,000. Rather than requiring the firm to make a showing of injury, therefore, the DOE decided that the U.S. Postal Service would receive a refund equalling the sum of its allocable shares, as determined in each of the four cases, totalling $1,011. In addition, the firm received accrued interest which brought the total refund amount to $1,112.

Standard Oil Company (Indiana)/E-Z Serve, Inc., 7/29/85; RF21-10409

E-Z Serve, Inc. filed an Application for Refund pursuant to the Amoco special refund procedures, *see Office of Special Counsel*, 10 DOE ¶ 85,048 (1982), based upon a claim that it had been injured by Amoco's alleged violations of the motor gasoline allocation regulations. The DOE determined, however, that Amoco did not have any supplier/purchaser relationship with E-Z Serve or a corresponding obligation to supply the firm during the consent order period. Consequently, E-Z Serve's refund application was denied.

Texas Oil and Gas Corporation/Conoco, Inc., 7/31/85; RF42-8

Conoco 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 with Texas Oil and Gas Corporation. The DOE found that Conoco paid above average market costs for natural gas liquids during several months of the Texas Oil and Gas consent order period. Using a three-step methodology, the DOE calculated a range of Conoco's competitive disadvantage. A refund of $64,199 was found to equitably compensate Conoco for any harm it experienced as a result of Texas Oil and Gas's alleged overcharges. The firm also

received accrued interest for a total refund of $98,297.

Texas Oil and Gas Corporation/Gulf Oil Corporation, 7/31/85; RF29-2

Gulf 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 with Texas Oil and Gas Corporation (TOGCO). The DOE found that Gulf paid above average market prices during numerous quarters of the TOGCO consent order period. Using a three-step methodology, the DOE calculated a range of Gulf's competitive disadvantage. A refund of $75,221 was found to equitably compensate Gulf for any harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $55,760 for a total refund of $130,981.

Warren Holding Company/Ballard Motor Sales, Inc., Armenti Brothers Service Station, Duquette Service Station, Inc., 7/30/85; RF169-0002; RF169-0003; RF169-0004

The DOE issued a Decision and Order concerning three Applications for Refund filed by three retailers of Warren motor gasoline. The claimants applied for refunds based on the presumption of injury threshold established in *Warren Holding Co.*, 13 DOE ¶———, No. HED-0192 (June 4, 1985). After examining the evidence and supporting information submitted by the applicants, the DOE concluded that they should receive refunds totalling $8,785 based upon the total volume of their Warren motor gasoline purchases.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 3, 1985.

[FR Doc. 85-21900 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 5 Through August 9, 1985

During the week of August 5 through August 9, 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.

Remedial Order

Sun Company, Inc., 8/7/85; HRO-0259

Sun Company, Inc. (Sun) objected to a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) on October 22, 1984. In the PRO, the ERA alleged crude oil overcharges resulting from the improper classification of three properties. Sun's central defense to the PRO was that crude oil derived from well tests was not "produced" within the meaning of the newly discovered crude oil rule, 10 CFR 212.79(b), and was thus entitled to treatment as newly discovered crude oil. Sun also contended that it should not be held liable under the rule of operator liability for the actions of other interest owners because they took their production in kind and made their own pricing decisions. The Office of Hearings and Appeals (OHA) determined that crude oil derived from well tests was "produced" within the meaning of the newly discovered crude oil rule. OHA also determined that the rule of operator liability did not require a showing of administrative convenience by the ERA, and included circumstances where other interest owners took production in kind and made their own pricing decisions. Accordingly, the PRO was issued in final form.

Requests for Exception

Energy Cooperative, Inc. 8/7/85; BEE-1127

Energy Cooperative, Inc. (ECI) filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought retroactive exception relief in the form of increased Entitlements benefits for the period December 1979 through April 1980. The exception relief would increase ECI's Entitlements sale benefits to the level they would have reached if Alaska North Slope crude oil had been afforded full Entitlements benefits. In considering the request, the DOE found that ECI had received exception relief which already compensated the firm for any hardship attributable to the DOE regulatory program during the same time period. Accordingly, exception relief was denied.

Dwight Sours, 8/6/85; HEE-0145

On April 17, 1985, Dwight Sours filed an Application for exception seeking relief from the requirement to prepare and file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE found that Sours was not unduly burdened by the reporting obligation, particularly given his opportunity to use estimates to complete the form. Accordingly, exception relief was denied.

Refund Applications

Adolph Coors Company/Bob's Gas and Chemical Company, 8/8/85; RF67-1

DOE issued a Decision and Order concerning an Application for Refund filed by Bob's Gas and Chemical Company, a reseller of Coors NGLs. Although the firm's purchases of Coors NGLs during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984) (*TOGCO*), Bob's elected to file its refund application in accordance with procedures for filing small claims, and based upon the presumption of injury, outlined in the *TOGCO* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Bob's should receive a refund of $5,000 in principal and $2,666.07 of accrued interest for a total refund of $7,666.07.

Aminoil U.S.A., Inc./Gengnagel Fuel Company et al., 8/8/85; RF139-8 et al.

DOE issued a decision granting refunds to 16 purchasers of NGLPs from the Aminoil U.S.A., Inc. deposit escrow fund. The refunds to these firms total $217,090, representing $141,442 in principal and $75,648 in interest. All of the applicants are ultimate consumers of the NGLPs purchased or have filed for a refund of $5,000 or less. All of the applicants therefore, are presumed to have been injured by the alleged overcharges and thus, a separate detailed showing of injury was not required.

Gulf Oil Corporation/Charles Allen's Gulf Service et al., 8/9/85; RF40-7 et al.

DOE issued a decision granting refunds to 88 purchasers of refined petroleum products from the Gulf Oil Corporation deposit escrow fund. The refunds to these firms total $235,890, representing $208,540 in principal and $27,350 in interest. All of the refund applicants has demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. Gulf may be required to pay additional interest; if so, each applicant will receive an additional, pro rata, refund.

Gulf Oil Corporation/Robert J. Check et al., 8/8/85; RF40-01074 et al.

The DOE issued a decision granting refunds to 57 purchasers of refined petroleum products from the Gulf Oil Corporation deposit escrow fund. The refunds to these firms total $90,897, representing $80,362 in principal and $10,535 in interest. All of the refund applications had demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. Gulf may be required to pay additional interest; if so, each applicant will receive an additional, pro rata, refund.

Dismissals

The following submissions were dismissed:

Name	Case No.
C.A. Dyer Oil Co	RF40-2640
Campbell Oil Co	RF104-3
Colonial Gulf-N-Haul	RF40-2277
Dobson Gulf	RF40-2272
Empire Gas Corp	RF104-6
Fuller Oil Co	RF104-2
Gulf Oil Corp	BRO-0211; HRO-0156; Thru HRO-0159; HRO-0166; HRO-0171; HRO-0172; HRO-0173; HRD-0166; HRH-0168; HRD-0191; HRD-0201; HRD-0207; HRD-0232; HRZ-0197; HRZ-0219
Minute Man Fuels, Inc	RF7-127
Pinewood Gulf	RF40-2279

Name	Case No.
Reed Distributing Co	RF104-1
Torres Gulf	RF42-2393

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 29, 1985.

[FR Doc. 85-21902 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of July 29 Through August 2, 1985

During the week of July 29 through August 2, 1985, the notice of objection to proposed remedial orders listed in the Appendix to this Notice was 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 order 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 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 this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 3, 1985.

Erickson Refining Corporation, Austin, Texas; HRO-0300, Crude Oil

On July 29, 1985, the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548 filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administraton, Office of Enforcement Programs issued to the Erickson Refining Corporation on May 30, 1985. In the PRO, the Office of Enforcement found that during November 1978, August 1979 and October 1979, Erickson received excessive amounts of Small Refiner Benefits when it improperly over-reported the volumes of its crude oil runs to stills.

According to the PRO, the violation resulted in Erickson's receipt of $216,183.16 of excess entitlements benefits.

[FR Doc. 85-21901 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3,500,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and The True Companies. The funds will be distributed to refund applicants who purchased propane, butane, natural gasoline, natural gas liquid products, #1 fuel, #2 fuel, crude oil, and/or motor gasoline from The True Companies during the Consent Order period (August 19, 1973 through January 28, 1981). A Proposed Decision and Order establishing refund procedures and soliciting comments from the public was issued on June 21, 1985. 50 FR 27049 (July 1, 1985).

DATE AND ADDRESS: Applications for refund must be filed by December 12, 1985 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All applications must be filed in duplicate and should display conspicuously a reference to Case Number HEF-0557.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute monies obtained from The True Companies (True). True entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period from August 19, 1973 and January 28, 1981. Under the terms of the Consent Order, True has remitted $3,300,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE has decided to allocate one-third of the consent order monies to crude oil claims and two-thirds of the monies to non-crude oil claims. The crude oil refund pool will be distributed in accordance with the DOE restitutionary policy set forth at 50 FR 27400 (July 2, 1985). The non-crude oil refund pool will be distributed in a two stage refund proceeding. The first stage will attempt to refund moneys to customers who can document their purchases of True products. The Decision and Order provides that the funds will be distributed to successful claimants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by the alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund may now be filed. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Date: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

August 29, 1985.

Name of Case: The True Companies
Date of Filing: December 7, 1984
Case Number: HEF-0557

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On December 7, 1984, the ERA requested that the OHA formulate and implement procedures to distribute funds which it received pursuant to a consent order with The True Companies [True].[1] This Decision

[1] "The True Companies" [True] is the name used in the Consent Order and in this Decision and Order to refer to six individuals (H. A. True, Jr., Jean D. True, Tumma T. Hatten, H. A. True III, Diemer D. True, and David L. True) doing busines[illegible] as the

Continued

and Order contains the procedures which the OHA has formulated to distribute that consent order fund.

I. Background

During the consent order period (August 19, 1973 through January 28, 1981) True produced, extracted, resold, and marketed petroleum products including crude oil, propane, butane, natural gasoline, and natural gas liquids. The True Consent Order also covers No. 2 fuel, No. 1 fuel, and motor gasoline although, according to True, the Companies did not sell these products but the products were included in the Consent Order solely to eliminate the potential for any further enforcement actions against True. Telephone Conversation between Irene Bleiweiss, OHS Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985). The Mandatory Petroleum Price Regulations, 10 CFR Part 212, governed the maximum prices that could lawfully be charged for all of the products covered by the Consent Order.

On August 6, 1981, the ERA issued a Proposed Remedial Order (PRO) to True Oil Company alleging that, from September 1, 1973 through October 31, 1978, True Oil Company charged more for propane, butane, and natural gasoline than it was permitted to by law. True Oil Company sold these products via transfer to an affiliated marketing company. The marketing affiliate was called Reserve Oil Purchasing Company until November 1973, and Black Hills Oil Marketers until November 1977, when it became True Oil Purchasing Company (TOPCO).

In order to settle the claims made in the PRO and any other claims which might have arisen from True's activities between August 19, 1973 and January 28, 1981, True and the DOE entered into a Consent Order on July 28, 1983. 48 FR 55768 (July 28, 1983). Pursuant to the Consent Order, True refunded the sum of $3,500,000.00 to DOE.

following companies: True Oil Company; True Drilling Company; Eighty-Eight Oil Company; Equitable Purchasing Company; Smokey Oil Company; True Oil Purchasing Company, now a defunct corporation; Black Hills Oil Marketers, Inc., now a defunct corporation; Black Hills Trucking, Inc.; Reserve Oil Purchasing Company, now a defunct corporation; Toolpushers Supply Company; Reserve Oil Field Supply Company; Belle Fourche Pipeline Company; True Land and Royalty Company, now a defunct corporation; and Cambria Oil Company. Five of these companies (Toolpushers Supply Company, True Drilling Company, True Land and Royalty Company, Belle Fourche Pipeline Company, and Black Hills Trucking, Inc.) were engaged solely in non-regulated activities such as drilling and transportation. Telephone Conversation between Irene Bleiweiss, OHS Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985).

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On June 21, 1985, the OHA issued a Proposed Decision and Order tentatively concluding that the implementation of a Subpart V proceeding was appropriate in this case and setting forth a tentative plan to distribute the True consent order fund. 50 FR 27049 (July 1, 1985) (Proposed Decision). The Proposed Decision noted that the True Consent Order covers crude oil as well as other petroleum products. In similar situations, we have divided consent order funds into separate crude oil and non-crude oil pools of refund monies because the regulations treat crude oil differently. *E.g., Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985). Therefore, we proposed to divide the consent order fund into separate pools in the present case. We found that it would be reasonable to allocate one-third of the fund ($1,166,666.70) to claims based on crude oil and two-thirds of the fund ($2,333,333.30) to claims based on purchases of other True products.

A copy of the Proposed Decision was published in the **Federal Register** and comments to the proposed refund procedures were solicited. In addition, we sent a copy of the Proposed Decision to firms which we tentatively identified, from the ERA audit file, as purchasers.

III. Refund Procedures

After considering the comments which we received to our proposed refund procedures, we have determined that the procedures set forth below are most appropriate.

A. Non-Crude Oil Products

The distribution of the non-crude oil refund pool will take place in two stages. The first stage will attempt to refund monies to those who purchased True products during the consent order period. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund. In addition, purchasers will be required to prove that they were injured by the alleged overcharges—i.e., that they did not pass any such overcharges on to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, and Texas submitted comments to our discussion, in the Proposed Decision, of second stage refunds. These comments argue that state governments are the appropriate recipients of second stage refunds. It would be premature for us to follow the States' suggestion and establish second stage refund procedures at this time. Such procedures will necessarily depend on the size of the fund remaining after first stage procedures are completed. Therefore, we will not determine second stage refund procedures until after first stage refund procedures are completed.

1. Refunds to Identifiable Purchasers

During the first stage of the refund process, the True consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by True's alleged overcharges. The audit file which provided the basis for the PRO issued to True Oil Company, identifies a number of customers who purchased that firm's propane, butane, and natural gasoline and who therefore might have been injured by the alleged overcharges. The names of these customers and the products and volumes which they purchased are set forth in the Appendix to this Decision and Order. However, since the customers identified in the Appendix are not the only customers who might have been injured by the prices which True charged, we will accept applications from the customers identified in the Appendix and any other parties who can demonstrate that they were injured by True's alleged overcharges.

All claimants will have to file an application in order to receive a refund. Applicants not specifically named in the Appendix will be required to provide all relevant information necessary to establish a claim, including documentation of the date, place, price and volume of the product(s) purchased. However, a customer named in the Appendix may utilize an alternative means to qualify for a refund if it is

unable to fully document its application. Under this alternative means, an identified customer must: (1) explain why documentation of its purchase volumes is not available or would be expensive or difficult to obtain; (2) certify that it was a purchaser of True products during the relevant period (see Appendix for dates); (3) certify that the specified purchase volumes in the Appendix appear reasonably accurate; and (4) limit its claims to the volumes and products set forth in the Appendix. *See Marion Corp.*, 12 DOE ¶ 85,013 (1984).

All applicants, with three exceptions discussed later in this Proposed Decision, will be required to show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund. While there are a variety of ways in which a showing of injury may be made, a reseller will generally be required to demonstrate that during the period covered by the Consent Order, it had "banks" of unrecovered product costs which were at least equal to the amount of the refund claimed, and that it did not pass these costs through to its own customers. A reseller might establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). If a reseller of True products passed the alleged overcharges through to its own customers, then these indirect customers will be entitled to a refund if they themselves can prove injury. Therefore, we will permit customers who indirectly purchased True products as well as those who purchased directly from True to file applications for refunds.

In this case we will adopt three presumptions of injury which have been used in many previous special refund cases. First we will presume that end-users or ultimate consumers of True products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will not require a showing of injury from agricultural cooperatives that passed the alleged overcharges on to their end-user members, provided that the cooperatives comply with standards set forth later in this Decision. Finally, we will presume that applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. The presumptions of injury which we are adopting in this case are applicable to all refund applicants, whether they are named in the Appendix or not.

a. End-Users. We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to show injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Customers in this group might include, for example, businesses and individuals who purchased propane for heating purposes. The fuel costs of such end-users are only one, indistinguishable component of their prices for goods and services. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records. Thus, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Id.* Therefore, such end-users who document their purchase volumes of True products during the consent order period will be found to have made a sufficient showing of injury. On the other hand, refund applicants who were subject to the DOE regulatory program will be required to provide a detailed demonstration that they were injured, with the exception of those making small claims.

b. Applicants Claiming a Refund of $5,000 or Less. We recognize that making a showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of True products. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,115 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984). We will adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000.00 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

c. Agricultural Cooperatives. Agricultural cooperatives will not be required to show that they did not pass increased costs through to their customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., APCO Oil Corp.*, 12 DOE ¶ 85,144 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

d. Spot Purchasers. We also will adopt a rebuttable presumption that firms which made only spot purchases of True products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of True's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the prices they paid for True products.

2. Calculation of Refund Amounts

We will use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of products which True sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which True sold during the period covered by the Consent Order. Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest.

We have tentatively set the True volumetric refund amount at $0.0469 per gallon. We derived this figure by dividing the consent order pool available for products other than crude oil ($2,333,333.30) by an estimate of the number of gallons of products which True sold during the consent order period (49,769,328).[2]

Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer can receive an appropriate proportion of the consent order fund. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Therefore, any purchaser may file a refund application based on a claim that his share of the alleged overcharges was greater than the *pro rata* amount determined by the volumetric presumption. We also recognize that, if we receive refund applications based on total gallonages which exceed our estimate or if we receive applications based on purchases of fuel oil or motor gasoline, it may become necessary to adjust the per gallon refund amount downward.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefit of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

B. Crude Oil

In the Proposed Decision, we proposed to follow the requirement enunciated in the cases of *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984) (*Johnson*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) (*Adams*) that, in order to receive a refund, an applicant must demonstrate that it bore the burden of the alleged overcharges. On June 19, 1985, we issued a Report in the *Stripper Well Exemption Litigation*. We found that "it is impossible to trace these increased costs through an individual refiner's refinery, distribution and marketing operations." Report of the OHA at 25. As a result, the Deputy Secretary of the Department of Energy issued a statement establishing a DOE policy of restitution for crude oil overcharges and the OHA issued an order implementing that policy. 50 FR 27400 (July 2, 1985) (DOE policy); 50 FR 27402 (July 2, 1985) (OHA implementation). The OHA's order notified the public that the DOE policy is to hold crude oil overcharge funds attributable to miscertifications after the implementation of the Entitlements Program in escrow pending Congressional action. Comments on that policy are currently being received and evaluated. The distribution of the crude oil refund pool in this case will be governed by that policy.

IV. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the True consent order fund. Accordingly, we will now accept applications for refunds from the non-crude oil refund pool. Distribution of the crude oil refund pool will be governed by the procedures which the OHA adopts pursuant to its implmentation of the DOE restitutionary policy.

Applications must be in writing, signed by the applicant, and make reference to case number HEF-0557. Applicants must include a showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative, or is claiming a refund of $5,000 or less. In the case of a spot purchaser, additional documentation of injury must be submitted to overcome the presumption that such a purchaser was not injured. Applicants must document the date, place, price, and volume of the products they purchased. However, if an applicant which is identified in the Appendix to this Decision and Order is unable to provide such documentation the applicant may qualify for a refund by (1) explaining why such documentation is unavailable or would be expensive or difficult to obtain; (2) certifying that it was a purchaser of True products during the relevant period; (3) certifying that the specified purchase volumes in the Appendix appear reasonably accurate; and (4) limiting its claims to the volumes and products set forth in the Appendix.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. 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 205.238(c), 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who the OHA may contact for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds which The True Companies remitted to the Department of Energy pursuant to the Consent Order executed on July 28, 1983, may now be filed.

(2) All applications must be received no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Identified Customers of True Oil Company's Marketing Affiliate: Reserve Oil Purchasing Company: Black Hills Oil Marketers, True Oil Purchasing Company

PROPANE: SEPTEMBER 1, 1973 TO OCTOBER 31, 1978

Customer name	Gallons purchased
A & V Gas	72,626
Alden Oil Co	81,535
Amoco Production	57,182
Arrow Gas	158,233
Black Thunder	166,674
Butane Power & Equipment	326,996
Cal-Gas Co	479,915
Cal Liquid Gas Co	1,568,045
Cenex	13,047,765
Davis Oil	2,550
Dix-O-Gas	296,712
Empire Gas	1,741,357
Gary Operating	277,137
H.S. Sowards	17,272
Huntsmen Oil	65,951
Kerr-McGee	23,571

[2] The ERA audit file did not account for the entire consent order period. It did, however, contain monthly gallonage data for True's marketing affiliate's sales of propane (61 months), butane (18 months), and natural gasoline (9 months). We used this information to compute the average monthly gallonage of propane butane, and natural gasoline which True Oil Company's marketing affiliate sold. We then multiplied this figure by the number of months in the consent order period to obtain our estimate of total gallons sold.

PROPANE: SEPTEMBER 1, 1973 TO OCTOBER 31, 1978—Continued

Customer name	Gallons purchased
Little America	41,012
McCulloch Gas	119,753
Murphy Oil Co	410
N.C. Paving Co	142,377
Jenny Paton	150
Paving Corp	30,440
Petrolane Intermountain	415,387
Polar Gas	74,003
Rocky Mountain Natural Gas	306,664
T & T Gas Products	209,196
Tooke Engineering	156,381
Townsend Co./Bill Townsend	18,065
Uan Gas, Inc	35,507
V-1 Oil Co	2,720,697
W & S	8,936
Westland Oil Co	9,001

BUTANE: DECEMBER 1973 TO OCTOBER 1978

Customer name	Gallons purchased
Amoco Oil	60,315
Farmers Union	1,100,037
Pasco	44,123
Solar Petroleum	809,546
Texaco	205,306

NATURAL GASOLINE: JANUARY 1974 TO SEPTEMBER 1974

Customer name	Gallons purchased
Cenex	37,684
Farmers Union	505,455
Tesoro Petroleum Co	56,173

[FR Doc. 85-21903 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL-2892-3]

List of Violating Facilities; Addition

AGENCY: Environmental Protection Agency.

ACTION: Notice of placement of facility on EPA list of violating facilities.

SUMMARY: The EPA Assistant Administrator for Enforcement and Compliance Monitoring decided on August 21, 1985, to add to Sublist 2 of the EPA's List of Violating Facilities the Las Vegas, New Mexico, facility of Sierra Transit Mix Company based upon continual or recurring violations of an administrative order issued under Section 113 of the Clean Air Act.

Accordingly, no Agency shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan or subloan where the facility listed would be utilized for the contract, subcontract, grant, subgrant, loan or subloan.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 3404, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202)475-8785.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act [42 U.S.C. 1857 et seq., as amended by Public Law 91-604], Section 508 of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq., as amended by Public Law 92-500], and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to Federal contracts, grants, or loans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** (see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). Section 15.20 of the regulations provides for the establishment of a List of Violating Facilities which will reflect those facilities ineligible for use in nonexempt Federal contract, grants or loans.

The List of Violating Facilities is contained in two sublists. Sublist 1 includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2 includes those facilities listed on the basis of: Any injunction, order, judgment, decree or other form of civil ruling by a Federal, State or local court issued as a result of noncompliance with clean air or water standards; or conviction in a State or local court for noncompliance with clean air or water standards; noncompliance with an order under section 113(a) of the Clean Air Act or section 309(a) of the Federal Water Pollution Control Act; or equivalent State or local proceedings to enforce clean air or water standards.

No agency shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan or subloan where a facility listed would be utilized for the contract, subcontract, grant, subgrant, loan or subloan.

The purpose of this notice is to add to Sublist 2 the Las Vegas, New Mexico facility of Sierra Transit Mix Company based upon continual or recurring violations of an administrative order issued under Section 113 of the Clean Air Act.

Pursuant to the above-referenced authority, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the following facility is on the List of Violating Facilities as of August 21, 1985. The List of Violating Facilities will be revised periodically as any listings or delistings occur.

List of Violating Facilities

Sublist 1: Chemical Formulators Inc., Nitro, West Virginia Facility.

Sublist 2: Sierra Transit Mix Company, Las Vegas, New Mexico Facility.

Dated: August 22, 1985.

Richard H. Mays,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 85-21944 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53073, FRL-2874-9]

Premanufacture Notices; Monthly Status Report for April 1985

Correction

In FR Doc. 85-18491 beginning on page 32294 in the issue of Friday, August 9, 1985, make the following corrections:

1. On page 32294, in table I:

a. In the Identity/generic name column for P85-733, "polyner" should read "polymer".

b. In the Identity/generic name column for P85-737, "polysubutituted" should read "polysubstituted".

2. On page 32295, in table I:

a. In the PMN No. column, the second entry now reading "P85-755" should read "P85-755"..

b. In the Identity/generic name column for P85-764, "-alkycyclo-" should read "-alkylcyclo-".

c. In the Identity/generic name column for P85-766, "cyclohetyl" should read "cyclohexyl".

d. In the Identity/generic name column for P85-767, "-alkycyclohexyl" should read "-alkylcyclohexyl".

e. In the Identity/generic name column for P85-775 and P85-776, "-alkoxyl-" should read "-alkoxy-".

f. In the PMN No. column, the entry now reading "P85-7" should read "P85-794".

g. In the Identity/generic name column for P85-801, "aciad" should read "acid".

h. In the Identity/generic name column for P85-817, "coumpunds" should read "compounds".

i. In the Identity/generic name column for P85-824, "alkyd" should read "alkyd resin".

3. On page 32296, in Table I:

a. In the Identity/generic name column for P 85-836 should read "(+)4-n-tetradecyl 4'-(2-methylbutyl)phenylbenzoate".

b. In the Identity/generic name column for P 85-837, "4'" should read "4'".

c. In the FR citation column for P 85-843, "1816(18917)" should read "18916(18917)".

d. In the Identity/generic name column for P 85-847, "-heptylviphenyl" should read "-heptylbiphenyl".

e. In the Identity/generic name column for P 85-867, "polyacid" should read "polyacid acid".

f. In the Identity/generic name column for P 85-870, "-termianted" should read "-terminated".

g. In the Identity/generic name column for P 85-40, "polymer" should read "polyol".

4. On page 32297, in table II:

a. In the Identity/generic name column for P 85-618, "-naphthalenedisulfonic" should read "-naphthalenesulfonic".

b. In the Identity/generic name column for P 85-629, P 85-630, P 85-631, and P 85-632, remove "Generic name:".

5. On page 32298, in table II:

a. In the Identity/generic name column for P 85-704, "tripshenol" should read "trisphenol".

6. On page 32299, in table III:

a. In the Identity/generic name column for P 85-424, "Diphyenylsulfone-" should read "Diphenylsulfone-".

b. In the Identity/generic name column for P 85-435, "digomer" should read "oligomer".

c. In the Identity/generic name column for P 85-28, "alkydrfesin" should read "alkyd resin".

7. On page 32300, in table IV:

a. In the Identity/generic name column for P 84-821, "epoxy" should read "epoxy resin".

8. On page 32300, in table V:

a. In the Identity/generic name column for P 83-677, "alkylaminoforminmidphenol" should read "alkylaminoformimidphenol".

b. In the Identity/generic name column for P 83-770, "phenolazonaphtol" should read "phenolazonaphthol".

c. In the Identity/generic name column for P 84-650, insert the word "sodium" at the end.

9. On page 32301, in table V:

a. In the Identity/generic name column for P 85-31, "heteromonocycle" should read "heteropolycycle".

b. In the Identity/generic name column for P 85-411, "imidaxolidines" should read "imidazolidines".

BILLING CODE 1505-01-M

[OPTS-59729; TSH-FRL 2889-2]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-20664 appearing on page 35313 in the issue of Friday, August 30, 1985, make the following correction:

In the third column, sixth line under Y 85-137 the Prod. range is corrected to read "285,648-1,142,592 kg/yr.".

BILLING CODE 1501-01-M

[OPTS-51586; TSH-FRL 2889-1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-20665 beginning on page 35314 in the issue of Friday, August 30, 1985, make the following correction:

On page 35314, in the third column, the fourth line under P85-1362 is corrected to read "tris dodecylbenzenesulfonato-0.".

BILLING CODE 1505-01-M

[OPP-30000/37B; FRL 2883-1]

Amended Notice of Preliminary Determination Concluding Special Review of Pesticide Products Containing Dicofol; Availability of Supporting Documentation

Correction

In FR Doc. 85-19572, beginning on page 33008, in the issue of Thursday, August 15, 1985, make the following corrections:

On page 33012:

1. In the first column, second complete paragraph, thirteenth line, "there assement" should read "the reassessment".

2. In the second column:

a. Under "*C. Summary of Benefit Determinations*", eleventh line, "had" should read "has".

b. In paragraph "1. *Methodology.*", fourth line, remove the comma at the end of the line.

3. In the third column, in the fifteenth line from the bottom of the page, "yung" should read "young".

BILLING CODE 1505-01-M

[OPTS-51582; FRL-2875-1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 856-18492, beginning on page 32290, in the issue of Friday, August 9, 1985, make the following corrections on page 32292:

1. In the second column, under **P 85-1233**, third line, "8-[5>-" should read "8-[5"-".

2. In the third column:

a. Under **P85-1235**, seventh line, "traizinylamino" should read "triazinylamino".

b. Under **P 85-1237**, sixth line, "6-(hydroxy" should read "6-(1"hydroxy".

c. Under **P 85-1238**, seventh line, "traizinylamino" should read "triazinylamino".

BILLING CODE 1505-01-M

[OPTS-51585; FRL-2887-4]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-20213, beginning on page 34189, in the issue of Friday, August 23, 1985, make the following correction:

On page 34190, first column, under P **85-1331**, *Toxicity Data*, second line, "<3.16" should read ">3.16".

BILLING CODE 1505-01-M

[OPTS-42072; FRL-2866-7]

2-Chloro-1, 3-Butadiene; Response to the Interagency Testing Committee

Correction

In FR Doc. 85-20308, beginning on page 34546, in the issue of Monday, August 26, 1985, make the following corrections on page 34547:

1. In the second column:

a. In the paragraph headed 1. *Production and use*, third line from the end of that paragraph, "contruction" should read "construction".

b. In the twelfth line from the bottom of the page, "cichloride" should read "dichloride".

2. In the third column:

a. In the seventh line, "Fat" should read "Fate".

b. In the sixteenth line, "water" should read "waste".

c. In the second complete paragraph, second line, "altmospheric" should read "atmospheric".

BILLING CODE 1505-01-M

[ER-FRL-2895-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed September 2, 1985 through September 6, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850371, Final, FAA, WI, Austin Straubel Field Airport Runway Extension, Brown County, Due: October 15, 1985, Contact: Glen Orcutt (612) 725-3346.

EIS No. 850374, DSuppl, COE, CA, Sacramento River Deep Water Ship Channel, Widening and Deepening, Environmental Impact Description Update, Yolo, Solano and Sacramento Counties, Due: October 28, 1985, Contact: Mike Welsh (915) 551-1891.

EIS No. 850375, Draft FHW, CA, Pacific Coast Highway/CA-1 Widening, CA-55 to Golden West Street, Orange County, Due: October 28, 1985, Contact: Glenn Clinton (916) 440-3578.

EIS No. 850376, Draft, SCS, WV, Middle Grave Creek Watershed Protection and Flood Prevention Plan, Marshall County, Due: November 5, 1985, Contact: Rollin Swank (304) 291-4151.

EIS No. 850377, Draft, COE, IA, Muscatine Island Levee District and Muscatine-Louisa County Drainage District No. 13 Local Flood Protection Plan, Muscatine and Louisa Cos., Due: October 28, 1985, Contract: Melvin Johnson (309) 788-6361.

EIS No. 850378, Final OSM, MT, Rosebud Mine Area D Expansion, Approval and Permits, Rosebud Couty, Due: October 15, 1985, Contact: Charles Albrecht (303) 844-5656.

EIS No. 850379, Final AFS, UT, WY, Wasatch-Cache National Forest, Land and Resource Management Plan, Due: October 15, 1985, Contact: Neil Hunsaker (801) 524-5030.

EIS No. 850380, Final MMS, AK, 1985 North Aleutian Basin Outer Continental Shelf (OCS) Oil and Gas Sale 92, Leasing, Bering Sea, Due: October 15, 1985, Contact: Thomas Boyd (907) 261-4668.

EIS No. 850381, DSuppl, IBR, CO, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, Summit, Grand, and Eagle Cos., Due: November 15, 1985, Contact: Richard Eggen (303) 236-0684.

EIS No. 850382, Final, EPA, PR, Culebra Wastewater Treatment Facility Plan, Design and Construction, Grant, Puerto Rico, Due: September 27, 1985, Contact: Robert Hargrove (212) 264-5390.

Amended Notice

EIS No. 850361, Final, COE, MS, Pearl River Basin Flood Control Plan, Hinds and Rankin Cos., Published FR 8-30-85—Retracted due to noncompliance of distribution.

Dated: September 10, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-21987 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2895-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 26, 1985 through August 30, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BOP-E81025-FL, Rating LO, Marianna Federal Correctional Institution and Federal Prison Camp, Construction and Operation, FL. Summary: EPA's review did not identify any potential environmental impacts requiring changes to the preferred alternatives.

ERP No. D-CDB-F89023-MI, Rating EC2, Cobo Hall Convention Center, Renovation and Expansion, UDA and CDB Grants, MI. Summary: EPA believes that the DEIS did not adequately analyze potential impacts to air quality. EPA recommends that queue studies be done for all of the alternatives, and that an appropriate background level be incorporated into the CO concentrations presented for analysis. In addition, EPA recommended that further analysis of the secondary impacts resulting from an expanded Cobo Hall be included.

ERP No. D-CDB-K89058-CA, Rating LO, Chinatown Redevelopment Project, Construction, Grants, CA. Summary: EPA recommended that the FEIS address any potential impacts to ground and surface waters from construction work and the storage of toxic substances and new project flows on existing waste water treatment facilities. EPA also recommended the adoption of traffic system management measures to protect air quality.

ERP No. D-COE-E23005-Al, Rating EC2, Huntsville Spring Branch and Indian Creek System, DDT Contamination Isolation, Remedial Action Plan, Permits (COE/TVA/FWS), Redstone Arsenal, Wheeler Reservoir, Tennessee R., AL. Summary: EPA's review determined that the requirements for a "Cap" or low permeability cover are not justified or technically feasible based on the low potential of a DDT release from the contaminated soils and the long term problem associated with maintaining the integrity of a "cap" in stream channel subject to both ground water discharge from springs and frequent headwater/backwater flood conditions. We have a degree of environmental concern about the generic issue of pesticide contamination in the Huntsville Spring Branch/Indian Creek System, but believe that the proposed remedial action will appropriately deal with this situation if our technical recommendations are implemented.

ERP No. D-COE-E36154-FL, Rating LO, Upper St. John's River Basin Flood Damage Reduction Plan, FL. Summary: EPA, in general, was impressed by the selected alternative which apparently will have a beneficial effect on wetlands and water quality within the project area.

ERP No. D-FHW-E40685-TN, Rating EC2, TN-386 Extension, I-65 to Hendersonville Bypass, Construction, and Right-of-Way Acquisition (404 Permit), TN. Summary: EPA requested that the FEIS include additional evidence of the projects SIP conformity, an analysis of other build alternatives, noise mitigation for sites 4, 7 and 11, and analysis of alignments that would avoid the farm ponds.

ERP No. D-FHW-L40147-OR, Rating LO, Mt. Hood Highway/US 26 Improvements, Wildwood to Rhododendron, OR. Summary: EPA has no objections to the project provided the wetland mitigation measures identified in the DEIS are implemented.

ERP No. D-UAF-E13000-GA, Rating EC2, Winnersville Air-to-Surface Weapons Range, Construction and Operation, Near Moody Air Force Base for Primary Use of 347 Tactical Fighter Wing, GA. Summary: EPA expressed some environmental concern regarding the wetland and noise issues and the need for additional information on the manner in which these impacts will be mitigated.

Final EISs

F-BLM-K67006-CA, Amselco Colosseum Gold Mine Extraction and Milling Operation, Reopening and Expansion, CA. Summary: EPA continues to have concerns about potential impacts to groundwater resources and quality.

ERP No. F-COE-C36050-NJ, Lower Saddle R. and Sprout Brook Flood Control Plan, NJ. Summary: EPA has no objection to the proposed project. However, EPA also recommended that additional mitigation be proposed in order to avoid the potential alteration of a small wetlands area, which may be indirectly impacted by the proposed project.

ERP No. F-COE-C36051-NJ, Ramapo R. Flood Control Plan, Oakland Area, NJ. Summary: EAP has no objection to the proposed project. EPA's previous comments on the DEIS were adequately addressed in the FEIS.

ERP No. F-COE-C36054-NJ, Molly Ann's Brook Flood Control Plan, NJ. Summary: EPA is concerned that the FEIS did not adequately address wetland impacts. This impact was considered insignificant by the COE in its response to EPS's DEIS comment letter. EPA believes that this impact is significant and that mitigation should be proposed for the project to eliminate or reduce this impact to a small wetland area.

ERP No. F-FAA-K51030-CA, John Wayne Airport Expansion, Improvements and Land Acquisition, CA. Summary: EPA's review concluded that the FEIS adequately responded to concerns raised on the DEIS.

ERP No. F-FHW-F40184-IL, FAP-406 Supplemental/IL-121 Freeway Construction, I-55 in Lincoln to I-74 in Morton, IL. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS-HUD-K89034-HI, Kaka'ako Community Development Plan, Makai Area, Mortgage Insurance, Grants and Rental Housing Subsidies, HI. Summary: EPA recommended that the Record of Decision include certain carbon-monoxide reduction mitigation measures, which were tentatively agreed to by the Hawaii Community Development Agency.

ERP No. FS-STA-A82110-00, Cannabis Eradication in Foreign Western Hemisphere Nations, Aerial Application of Herbicide Glyphosate and Paraquat, Potential Health Risks from Smoking Marijuana Containing Residuals. Summary: EPA had no comments on the Final Supplement.

Dated: September 10, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-21986 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50639; FRL-2878-4]

Issuance of Experimental Use Permits

Correction

In FR Doc. 85-18733, beginning on page 31917, in the issue of Wednesday, August 7, 1985, make the following corrections on page 31918:

1. In the second column, third complete paragraph, eighth line, "ornamental" should read "ornamentals".

2. In the third column, first complete paragraph, twelfth line, insert "Arizona," between "Alabama," and "Arkansas"

BILLING CODF 1505-01-M

[SAB FRL-2898-2]

Science Advisory Board, Radiation Advisory Committee; Amended Meeting

Notice is hereby given in accordance with Public Law 92-463 of a change in the agenda of the Radiation Advisory Committee meeting to be held September 19-20, 1985. Publication of the original agenda appeared in the **Federal Register** on September 5, 1985, page 36142. The amended notice is to inform the public that in addition to the issues listed in the September 5 **Federal Register** Notice, the Radiation Advisory Committee will provide advice and comment on EPA's Estimates of Lung Cancer Risk from Exposure to Radon Decay Products. As stated in the earlier notice, the Committee will meet at Westpark Hotel, 1900 North Fort Myer Drive, Shenandoah D Conference Room, Rosslyn, Virginia 22209, beginning at 10:00 a.m. on September 19 and 9:00 a.m. on September 20 and adjourning no later than 5:00 p.m. each day. For further information contact Kathleen White Conway, Executive Secretary to the Radiation Advisory Committee at (202) 382-2552 before close of business September 18, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-22092 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[File No. CCB-DFD-83-1; FCC 85-455]

Cox Cable Communications, Inc., Commline, Inc., and Cox DTS, Inc., Petition for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion, Declaratory Ruling and Order.

SUMMARY: In response to a petition for declaratory ruling filed by Cox Cable Communications, and its wholly-owned subsidiaries, Cox DTS, Inc. and Commline, Inc., the Commission preempted the Nebraska Public Service Commission's prior certification requirements imposed on Commline of Omaha's provision of institutional transmission service. The Commission had been asked to preempt state and local regulation of facilities located within one state and used to originate, distribute or terminate interstate communications, including those facilities that also distribute intrastate communications. With respect to the Commline services, the Commission concluded it should preempt Nebraska's prior certification requirements because such requirements infringe on federal policies.

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

FOR FURTHER INFORMATION CONTACT: Emily Williams, Domestic Facilities Division, 202-634-1860.

Memorandum Opinion, Declaratory Ruling and Order

In the Matter of Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc.; FCC 85-455, File No. CCB-DFD-83-1. Petition for Declaratory Ruling.

Adopted: August 7, 1985.

Released: September 5, 1985.

By the Commission: Commissioner Quello dissenting and issuing a statement; Commissioner Rivera not participating.

1. The Commission has before it a petition for declaratory ruling filed by Cox Cable Communications, Inc. (Cox), and its wholly-owned subsidiaries, Cox DTS, Inc. (Cox DTS) and Commline, Inc. The petition seeks a ruling that "this Commission has jurisdiction over and has preempted state and local regulation of facilities located wholly within one state and used to originate, distribute or terminate interstate communications including such facilities [that] also distribute intrastate communications." [1] Thirty-eight parties filed comments on the petition and twenty-two parties filed replies.[2]

2. Cox's request arises from a Nebraska Public Service Commission (NPSC) order requiring Cox's subsidiary, Commline of Omaha, Inc. (Commline), to cease and desist from providing certain services in Omaha, Nebraska until it

[1] *See* paras. 6-8 *infra* for a complete discussion of the Cox request.

[2] *See* paras. 9-17 *infra*.

obtains a certificate of public convenience and necessity from the NPSC. For the reasons stated herein, we find that the uncertainty caused by the Nebraska prior certification requirement has impaired, and likely will continue to impair, Commline's ability to provide interstate services. We also find that the Nebraska prior certification requirement conflicts with and stands as an obstacle to the accomplishment and execution of our policies encouraging the development of a competitive interstate communications marketplace, encouraging the provision of services other than video services over cable facilities, and encouraging efficient use of communications facilities. Therefore, we hereby preempt the Nebraska prior certification requirement as it relates to the provision of service by Commline.

I. Background

3. Cox is an operator of cable television systems serving over 1.2 million subscribers in 23 states. Commline, Inc. was formed by Cox to develop and operate "institutional" [3] high-speed digital transmission services (including video teleconferencing, electronic mail, and high speed facsimile) in the markets in which Cox's cable television systems are franchised and committed to providing such services. Cox DTS was formed to be the licensee and operator of Digital Termination System (DTS) facilities.[4] Cox Cable of Omaha, Inc. (Cox-Omaha), a subsidiary of Cox, operates a cable television system in Omaha, Nebraska. Pursuant to a non-exclusive franchise granted by the city, two cables have been installed by Cox-Omaha: cable A, called the "residential" cable, is used to transmit television broadcasts and pay television programming and to provide Cox's INDAX (tm) service; [5] cable B, called the institutional cable, is used by Commline to provide high-speed digital transmission services to governmental and educational institutions and private businesses. According to its petition, Cox plans to interconnect the institutional cable network with DTS facilities for which Cox DTS has filed a construction permit application, in order to expand the coverage and increase the flexibility of the two technologies. Commline expects to provide service to interstate satellite and microwave carriers, such as MCI Telecommunications Corp. (MCI), for whom Commline already originates and terminates interstate traffic.

4. In December 1982 when Commline was preparing to provide its transmission services in Omaha, the NPSC instituted an investigation of Cox, Commline and MCI to determine: (1) Whether Commline and Cox's INDAX service were subject to NPSC authority and, therefore, whether Cox was required to obtain a certificate of public convenience under Nebraska statutes and (2) the impact of Commline/MCI services on Northwestern Bell Telephone Co. and other telecommunications carriers. On April 19, 1983, after conducting several days of hearings, the NPSC issued an order concluding that Commline "is a carrier furnishing communication services for hire in Nebraska intrastate commerce and, as such, is a common carrier subject to regulation by this Commission. . . ." [6] Thus, the NPSC ordered Commline to "cease and desist from offering communications service for hire in Nebraska" until it had received a certificate of public convenience and necessity from the NPSC.[7]

5. Shortly thereafter Cox filed a request for a preliminary injunction against the enforcement of the NPSC cease and desist order in the United States District Court for the District of Nebraska. The court found that it was not possible at that time to know whether the NPSC would grant a certificate to Commline or, if it did grant a certificate, what type of regulation would be imposed. Thus, it decided to abstain from ruling on the constitutional questions raised by the petitioners while Cox sought a certificate from the NPSC, but retained jurisdiction over the case. The court granted a preliminary injunction pending the outcome of the NPSC proceeding.[8]

A. The Cox Petition

6. In its petition, Cox generally asks that this Commission enter declaratory rulings that it has jurisdiction over and has preempted state and local regulation of all facilities located wholly within one state and used to originate or terminate interstate communications, including such facilities that also distribute intrastate comunications. Cox states that the NPSC investigation has had an adverse effect upon Commline's marketing and on the development of its business and that this Commission must preempt state regulation in order to encourage the rapid development of new and innovative cable services. State common carrier regulation, like that imposed by the NPSC, presents "a clear and present danger" to the development of cable television technology and new communications services, according to Cox.[9]

7. In support of the petition, Cox states that its institutional cable will be used to originate and terminate interstate traffic and as such is subject to this Commission's jurisdiction. Although its institutional cable also will be used for intrastate communications, Cox argues that the configuration of Commline's plant is such that a single coaxial cable channel assigned to a Commline customer will carry both the local and interstate traffic on a nonsegregable, combined basis.[10] Thus, relying on *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (NCUC I), and *People of the State of California v. FCC*, 567 F.2d 84 (D.C. Cir. 1977), it argues that state and local regulation of the intrastate traffic should be preempted because such regulation would be infeasible and impractical and would interfere with interstate services and federal policies. Although some of its customers may not use the Commline facilities for any interstate services (*i.e.* all their communications would originate and terminate in Omaha) Cox argues that since these wholly intrastate customers will use the same cable and facilities as customers who have some interstate needs, it would be impractical to separate the interstate in intrastate use. Finally, Cox argues that this Commission already has preempted state regulation of DTS facilities and that state regulation that impedes interconnection with DTS likewise has been preempted.

8. Cox also argues that since it does not hold itself out to serve the public indiscriminately but rather chooses with

---

[3] As used in the pleadings, "institutional" services refer to services offered to businesses and institutions, as opposed to those services offered to residential customers.

[4] Digital Termination System (DTS) facilities are microwave radio facilities providing local distribution of communications in the Digital Electronic Message Service (DEMS).

[5] INDAX (tm) is Cox's residential subscriber service, which is offered on cable A and permits a variety of transactional services such as banking and information retrieval. The request for declaratory ruling is directed only to the services offered by Commline on the B cable. Cox Reply at 4.

[6] In the Matter of the Nebraska Public Service Commission Investigation into Proposed Operations of Cox Cable, MCI, and Commline, at 2 (April 19, 1983).

[7] *Id.* at 3.

[8] In granting the preliminary injunction, the court found that Commline would be placed at a severe disadvantage if it were forced to suspend operations pending the outcome of the state proceedings. Cox Cable Communications, Inc. v. Simpson, 569 F. Supp. 507, 517 (D. Neb. 1983).

[9] Petition at 36.

[10] Petition at 15–16. It argues that the only feasible way to segregate the intrastate traffic from the interstate traffic would be to build separate and distinct cables for interstate and intrastate use.

whom to deal and on what terms, it is not a common carrier.[11] If it is not a common carrier, section 2(b) and 221(b) of the Communications Act, 47 U.S.C. 2(b) and 221(b), which reserve to the states jurisdiction over intrastate and "exchange" common carrier services, do not apply and thus are no bar to federal preemption, according to Cox. Additionally, Cox argues that no "telephone exchange" services or facilities are involved in the Commline services or in the interconnection of Commline services with DTS facilities.[12] Finally, Cox states that it intends to offer "enhanced services" and, therefore, under this Commission's *Computer II* decision[13] state regulation of those services has been preempted.

B. Comments

9. Comments supporting the petition were received from cable companies,[14] cable equipment manufactures,[15] MCI Telecommunications Corp., Satellite Business Systems, the National Cable Telecommunications Association, Inc. (NCTA), and the cities of Santa Ana, California and Omaha, Nebraska. In addition to reiterating the legal arguments raised by Cox, many of the cable companies described difficulties that they had had with various telephone companies or state regulatory bodies in their attempts to provide services similar to those provided by Commline. These companies argue that if this Commission fails to act to preempt state regulation of their facilities and services, technological innovations in cable communications will be impeded.[16] Other commenters allege that Northwestern Bell and other telephone companies opposing similar services simply are trying to stifle competition.[17]

10. Comments opposing the petition were received from telephone companies,[18] the United States Independent Telephone Association (USITA), the states of California and New Jersey,[19] the Nebraska Department of Justice, the Michigan Public Service Commission, and the Washington Utilities and Transportation Commission. Several arguments were raised by these commenters. First, they argue that in *National Association of Regulatory Utility Commissioners* v. *FCC*, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II), the D.C. Circuit already has determined that the FCC may not preempt state regulation of two-way, point-to-point, non-video communications.[20]

11. The telephone companies and states also argue that Commline is operating as a common carrier because its objective clearly is to serve as large a body of subscribers as it can. In response to the Cox assertion that it and other cable companies are not common carriers because they make individualized decisions relating to with whom they will deal and under what conditions, the telephone companies assert that a company cannot avoid common carrier status simply by opting out of some of the rules that govern the behavior of carriers. They also argue that the service is common carrier coummunications service because, unlike traditional cable services, the data and voice services available over Cox facilities are pure transmission service under which the customer transmits intelligence of his own design and choosing.[21]

12. These commenters argue that there is a lack of factual support for Cox's claim that it is impossible to segregate the inter- and intrastate services and that no reason has been demonstrated for exempting Cox and other cable companies from jurisdictional separations when other carriers are subject to that process.[22] Many of the telephone companies argue that Cox's use of coaxial cable utilizing broadband technology is not unique and object to what they see as an attempt to provide services identical to what the telephone companies provide without the regulatory burdens imposed upon the telephone companies.[23] They argue that it would be neither legal nor fair to grant cable companies such a favored position and state that the impact on local telephone companies could be severe resulting in a significant drain on revenues.[24] Northwestern argues that if the Commission does "preempt state regulatory jurisdiction over point-to-

[11] In support of this argument Cox cites National Ass'n of Regulatory Util. Comm'r v. FCC, 525 F.2d 630 (D.C. Cir. 1976) (NARUC I) and National Ass'n of Regulatory Util. Comm'r v. FCC, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II).

[12] Cox argues that its services are not switched and states that although the institutional cable can carry voice traffic with additional terminal equipment, Commline does not provide such equipment. Petition at 42–43. Cox also states that many of the services Commline offers are not or have not been generally available in Nebraska and, therefore, that Commline's operations will have little or no effect upon Northwestern Bell and its telephone exchange traffic and revenue.

[13] Second Computer Inquiry, 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *second further reconsideration*, FCC 84-190 (released May 4, 1984).

[14] Cable companies submitting comments were: Warner Amex Cable Communications, Inc. (Warner); Westinghouse Broadcasting and Cable, Inc. (Westinghouse); A–R Telecommunication Division of Adams-Russell, Satellite Syndicated Systems, Inc., and Joseph S. Gans Cable TV, Inc. (joint comments) (A–R Telecommunications); Tribune Cable Communications Inc. and Continental Cablevision, Inc. (joint comments) (Tribune); Storer Communications, Inc. (Storer); General Electric Cablevision Corp. (General Electric); Viamcom International, Inc. (Viacom); Rogers U.S. Cablesystems, Inc. (Rogers); Cablevision Systems Development Co. (Cablevision); Times Mirror Cable Television, Inc. (Times Mirror); and Scripps-Howard Broadcasting Co. (Scripps-Howard). In addition, Albuquerque Cable Television Inc., Wentronics, Inc. and Santa Fe Cablevision Co. (Albuquerque) filed late comments together with a motion for acceptance of informal comments. We hereby accept Albuquerque's comments.

[15] Manufactuers submitting comments were: General Instrument Corp. (General Instrument); C-Cor Electronics, Inc., Texscan Corp. and Scientific Atlanta.

[16] General Instrument at 11–17; Cablevision at 9–11, 38; Albuquerque, passim. Westinghouse agrues that the viability of conventional cable programming may depend upon cable's ability to provide these new services. Westinghouse at 2. *See also* Reply Comments of Rogers which includes an appendix listing eight states that are considering regulation of Commline-type services.

[17] *See, e.g.*, Roger at 3. Rogers also argued that many of the services provided by its cable subsidiary, Cablesystems Pacific, are "enhanced services" under the *Second Computer Inquiry*, note 13 *supra*, and thus preempted on that basis.

[18] Telephone companies submitting comments include: The American Telephone and Telegraph Co. (AT&T); United Telecommunications (United); Pacific Telephone and Telegraph Co. (PT&T); Ameritech (on behalf of its telephone operating companies); Northwestern Bell Telephone Co., Mountain States Telephone and Telegraph Co. and Pacific Northwest Bell Telephone Co. (Northwestern); and the telephone companies of the NYNEX, Bell Atlantic, Bell South and Southwestern Bell regions (BOCs).

[19] The State of New Jersey also filed a motion to accept late filed pleadings. That motion is hereby granted.

[20] *See, e.g.*, AT&T at 7.

[21] *See, e.g.*, BOCs at 7.

[22] BOCs at 8; Ameritech at 15.

[23] Northwestern states that the "institutional" cable is a coaxial cable similar to those used in the telephone industry and that Northwestern itself provides the same services that Commline provides. It also aruges that Cox's request, if granted as proposed, would preempt practically all state regulation now in place over intrastate facilities and services.

[24] Ameritech at 3–4; Northwestern at 60–65. Northwestern states, for example, that the $2.5 million per year that Cox has stated it hopes to earn in the first five years of business is "the vast majority of Northwestern Bell's Omaha private line revenues of $3 million per year. Northwestern also requests that "[a]s part of [the Commission's] decision in this proceeding [we] should make it clear that [the] 'pole attachment' pricing rules do not apply to . . . cable used . . . to provide services that are similar to telecommunications services provided by telephone companies." *Id.* at 45.

point telecommunications cable facilities used to provide both interstate and intrastate communications within an exchange area, such preemption must be tailored so as not to favor one supplier (or one technology . . .) over another." [25]

13. Several commenters also question the advisability of ruling on questions of this importance and breadth pursuant to a declaratory ruling request. PT&T notes that the Commission's authority to issue a declaratory ruling is founded upon the adjudication section of the Administrative Procedure Act and argues that an agency should proceed by rulemaking if it seeks to establish rules of widespread application.[26] NTIA, agreeing with these comments, suggests that more information is needed on the threat of bypass before this Commission can properly rule on the petitions.[27] On the other hand MCI argues that if the Commission declines to act at this time, the services proposed by the cable companies will never develop. MCI suggests that if there is to be an inquiry it should follow a developmental period, after which the Commission would have meaningful information on whether regulation is desirable or necessary.

14. Reply comments were filed by twenty-two entities.[28] In large part, the replies reiterate the initial comments filed. Several additional arguments were raised, however, and Cox clarified its original request stating that its petition for declaratory ruling was directed only to Commline's facilities and services and not to INDAX, Cox's residential subscriber service offered on Cable A. Cox also stated that its "petition does not seek a declaratory ruling of federal preemption over *'all* state regulation' of 'switched' facilities . . . or the local 'loop' plant of telephone companies' intrastate monopoly services and 'local exchange service.' " It states that Cox has no intention of providing exchange or basic telephone service and does not seek federal preemption over such services if provided by cable sysems. Its petition is limited to its current or planned services which it describes as dedicated private lines "intended to be, and which demonstrably are, unlike local telephone exchange service."

15. Cox, and the commenters supporting its petition, challenge the assertion made by several commenters that *NARUC II* precludes this Commission from granting the requested relief. Although the Court in *NARUC II* held that this Commission could not preempt state common carrier regulation of a cable system's leased access channels used for two-way point-to-point communication, Cox argues that the *NARUC II* case is distinguishable from the case now before the Commission. According to Cox the only proposition for which the case may be cited is that the FCC may not preempt state regulation of such services based on its "reasonably ancillary to broadcasting" powers.

16. The cable companies also argue that it would make no sense to treat them as common carriers simply because they seek to maximize their customer base since all prudent businessmen seek to do so. Rather, they assert that the common carrier inquiry should focus on how a company deals with its customers, *i.e.*, whether a company undertakes to serve all customers indifferently.[29] Since Commline and other cable companies tailor their offerings to the individual customer, they should not be treated as common carriers, according to these commenters.

17. Reply comments filed by the telephone companies and others opposing Cox's petition argue, primarily, that Cox is in fact operating as a common carrier and that Cox's attempts to distinguish the services it provides from those provided by telephone companies should not be accepted by this Commission. Northwestern, for example, argues that simply labeling the services as "broadband" as Cox has done is irrelevant; whether a cable is broadband has nothing to do with service classification.[30] Regardless of the nature of the service, the telephone companies argue for parity in regulatory treatment. If the Commission allows Cox to provide its two-way services on an unregulated basis these companies argue that all businesses, including telephone companies, should be treated similarly.[31]

18. Finally, several commenters disagreed with NTIA's suggestion that the Commission conduct a rulemaking proceeding on the issues raised in the Cox petition. They argue that the primary questions to be resolved are legal rather than factual and that the legal issues have been fully briefed in the comments.

II. Discussion

A Procedural Matters

19. The first issue to be resolved is whether it is appropriate for this Commission to issue a declaratory ruling on the subjects raised by the Cox petition. As noted above, several parties urge us to refrain from issuing any ruling in this proceeding and, instead, commence a rulemaking. These commenters generally argue that there is insufficient information to issue a ruling at this time. In addition, USTA argues that we should not rule on the petition since the record is stale.

20. It is clearly within the power of this agency to proceed either by declaratory ruling or by rulemaking. *See NCUC I* at 790, n.2. The Commission has issued declaratory rulings on preemption issues on several occasions. *See, e.g., Ortho-Vision, 69 FCC2d 657 (1978), reconsideration,* 82 FCC2d 178 (1980), *aff'd sub nom. New York State Comm'n on Cable Television, v. FCC,* 669 F.2d 58 (2d Cir. 1982); *Earth Satellite Communications, Inc.,* FCC 83-526 (released Nov. 17, 1983), *aff'd sub nom. New York State Comm'n on Cable Television v. FCC,* 749 F.2d 804 (D.C. Cir. 1984); *Telerent Leasing Corp.,* 45 FCC2d 204 (1974), *aff'd sub nom. North Carolina Utilities Comm'n v. FCC, supra.*[32] We believe that with respect to at least some of the issues raised, the Commission has sufficient information

---

[25] Northwestern at 17–18.

[26] PT&T at 3–5. *See also* Northwestern at 5–6; NYNEX Replay Comments at 2; AT&T Reply Comments at 4–5.

[27] NTIA at 5. Bypass generally refers to the phenomenon of telecommunications users abandoning the local exchange network by using alternative facilities, primarily user-owned and operated facilities. *See* Third Report and Order in MTS and WATS Market Structure, 93 FCC 2d 241, Appendix F (1983), *aff'd in part and remanded in part,* National Ass'n of Regualtory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. filed,* No. 84-93 (filed July 18, 1985).

[28] Replies were filed by Ameritech, AT&T, the BOCs, Cox, General Electric Cablevision, Hughes, MCI, the Michigan Public Service Commission (Michigan), California, NARUC, NCTA, NTIA, Northwestern Bell, Rogers, Scripps-Howard, PT&T, California, Time, Inc., USITA, Warner Amex, and Westinghouse. In addition, the State of California filed an *ex parte* communication relating to its opposition to the enactment of H.R. 4103. Finally, on July 22, 1985, the United States Telephone Ass'n (formerly USITA) filed supplemental comments together with a motion to accept the comments. The supplemental comments argued that the lapse of time since the record in this case was closed render a decision at this time inappropriate. NCTA, United Cable Television Corp. and Cox opposed the motion and the National Telephone Cooperative Association, OPASTCO and North Pittsburgh Telephone Co. supported the motion. USTA replied. USTA's motion to accept the comments is hereby granted. Nonetheless, as indicated herein, we believe we have sufficient information to rule on a part of the Cox request.

[29] NCTA Reply Comments at 20.

[30] Northwestern Reply at 11.

[31] Ameritech Reply at 4–12.

[32] It also has declined to issue a requested ruling when it found it had insufficient information before it. *See Aeronautical Radio, Inc.,* 77 FCC 2d 535 (1980).

to rule. We have received extensive comments and reply comments on what primarily are legal and policy (rather than factual) issues, and it is not clear that further proceedings would generate additional relevant information contributing to a better decision.

B. Common Carrier Status [33]

21. As is noted above, Cox has asked this Commission to issue an order stating that as it currently operates, Commline is not a "common carrier" within the meaning of section 3(h) of the Communications Act, 47 U.S.C. 153(h). Whether Commline is operating as a common carrier within the meaning of section 3(h) does not affect this Commission's jurisdiction over Commline's interstate facilities and services. But because Section 2(b), 47 U.S.C. 152(b), limits this Commission's jurisdiction over intrastate communications of any common carrier, it may affect the preemption analysis. Thus, we shall first decide whether Commline is acting as a common carrier in its provision of service in Omaha for purposes of the Communications Act.

22. The test most often cited for whether an entity providing communications service is a common carrier was enunciated in *NARUC I*, note 11 *supra*. In that case the court found that to be a common carrier an entity must either be under a legal compulsion to "hold himself out indiscriminately to the clientele one is suited to serve" or, if not under legal compulsion, in fact to do so. *Id.* at 641.

23. The Nebraska PSC found that Commline is a common carrier and that "the record clearly shows that Commline would offer to serve any customer along its cable who had need of its service." We do not believe that finding satisfies the test articulated in *NARUC I*, since it does not include an "indiscriminiate holding out" or an indiscriminate offering of the services. In any event, we are not bound by the Nebraska finding for the purposes of determining common carrier status under the Communications Act.[34] We must make our own analysis of Commline's status.

24. Commline claims that it deals on an individual basis with each potential customer, that it does not have set prices or terms and conditions and that, therefore, it is not a common carrier.[35] No party brought forth evidence that Commline actually operates in a manner different than it claims. The evidence of the commenters on the other side amounts to little more than claims that Commline would like to sell its service to more customers and that if two customers did obtain the exact same service features, they would be charged the same price. An indiscriminate offering requires more than a desire to serve ore customers, and the consequent actions taken to obtain more customers (*e.g.*, a willingness to discuss the services offered with any interested party). An indiscriminate offering includes an offering to provide service without negotiation of provision of the service on an individualized basis. It appears that Commline does conduct business through individualized negotiations and does not hold itself out to serve the public indiscriminately.

25. When comparing Commline's services to the Specialized Mobile Radio Service (SMRS) found to be non-common carrier in *NARUC I*, it appears that Commline's services have most of the attributes of non-common carriage that SMRS has. In *NARUC I*, the court found SMRS not to be common carriage because the service "would involve the establishment of medium to long term relationships" with a fairly stable customer base and because the SMRS operators would make "individualized decisions about the desirability and compatibility of serving new customers." It appears that the Commline services also will tend to involve long relationships and, since the service is somewhat specialized, *see*, note 36 *supra*, it lends itself to individualized determinations as to the ability and desirability of serving new customers.

26. The second part of the *NARUC I* test is whether there is any legal compulsion for Commline to hold itself out indiscriminately to the public. *See generally Transponder Sales*, 90 FCC 2d 1238, 1255–57 (1982), *aff'd sub nom. World Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984). Certainly, this Commission has never found Commline to be compelled to hold itself out indiscriminately. The other aspect of this question is whether there is any reason to require Commline to hold itself out indiscriminately, *i.e.*, is there any compelling reason to regulate Commline as a common carrier. We find that there is none.

27. Commline has little or no market power. Although there are some barriers to entry the market, they do not appear to be sufficiently high to vest Commline with market power. There are alternative methods of providing similar service.[36] DEMS is one alternative; over a dozen carriers have applied for DEMS in Omaha and several construction permits' have been granted. In addition, although Cox was able to lay its cable pursuant to a franchise granted by Omaha, that franchise is not exclusive.

28. In addition, the Commline service is similar to private line service and we assume that it will be used primarily by companies and institutions with some ability to protect their rights in dealing with Commline. Further, the Commline service does not have the characteristics of, and could compete to only a limited extent with, traditional telephone exchange service and switched access service.[37] Accordingly, we find there is no compelling reason to regulate Commline as a common carrier.[38]

---

[33] Several commenters argue that the holding in *NARUC II*, note 11 *supra*, precludes a finding by this Commission that Commline's services and facilities are not common carriage. However, only one judge (Judge Wilkey) made a finding that the provision of two-way, point-to-point, non-video communications in that case was common carriage. The other two judges specifically in that case was common carriage. The other two judges specifically questioned Judge Wilkey's conclusion. In addition, Judge Wilkey's finding rested on the requirement, then contained in the Commission's rules, that cable operators provide "first-come, non-discriminatory access" to their leased channels. These rules were subsequently overturned in Midwest Video Corp. v. FCC, 440 U.S. 689 (1979). Therefore, *NARUC II* does not dictate any particular decision as to whether Commline is operating as a common carrier in Omaha.

[34] We note that the Nebraska statute defines "common carriers" as specifically including "contract carriers". *See* Neb. Rev. Stat. section 75–109.

[35] It its reply comments, Westinghouse described the specialized nature of these types of services as follows: "cable systems can be configured for a given customer so as to provide the precise bandwidth necessary to meet the particular mix of video, data, and/or audio transmission needs unique to a given user. . . . By selecting among different frequency arrangements and addressability techniques and by incorporating a variety of terminal devices and modems at customer sites, cable services are tailored to meet unique requirements. Cable services necessarily are founded on the given set of requirements that are unique to a given user, rather than a uniform channel or circuit assignment." Westinghouse Reply at 6–7.

[36] *See also* In re Lightnet, File No. W–P–C–5166, FCC 85–276 (released May 20, 1985).

[37] Although the "cable headend" performs a primitive switching function, the switch is unlike in the telephone hierarchy in that a cable subscriber cannot "call" every other subscriber connected to the switch; subscribers can only communicate with predesignated locations. In that way, the communications service is more like a point-to-point or point-to-multipoint private line service than a switched service or "telephone exchange service," which is defined in Section 3 of the Communications Act, 47 U.S.C. 153, as "interconnecting service of the character ordinarily furnished by a single exchange. . . ."

[38] We note that the State of California recently completed an investigation into the question of whether intraLATA toll competition should be allowed. While generally refusing to authorize intraLATA competition, it made an exception for high-speed data transmission services over private line networks. It based its decision in part upon findings that private line revenues are less than 2%

Continued

C. Preemption

29. The second major ruling requested by Cox is that state regulation of facilities like Commline's that are used to originate and terminate interstate communications are preempted because of the effect such regulation would have on interstate communications and federal law and policy. There is no dispute that the service being provided by Commline is a communication service by wire and that at least one of its customers is using the facilities for the origination and/or termination of interstate communications.[39] Section 2(a) of the Communications Act, 47 U.S.C. 152(a), provides that the Act's provisions apply to "all interstate an foreign communication by wire or radio." It is also clear that the Commission has end-to-end jurisdiction over facilities used in interstate communication and the interstate services provided over those facilities regardless of the facilities' physical location. *See, e.g., People of the State of California v. FCC, supra. See also AT&T*, 71 FCC 2d 1 (1979); *AT&T* (Arco), Mimeo No. 636 (Nov. 8, 1983), *reconsideration*, Mimeo No. 3267 (April 3, 1984). In addition, it is clear the Commission has jurisdiction over the facilities used in interstate communications even if they are "primarily" used for intrastate service. *See, e.g., North Carolina Utilities Comm'n v. FCC*, 552 F.2d 1036, 1045–47 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (NCUC II); *Puerto Rico Telephone Co v. FCC*, 553 F.2d 694, 700 (1st Cir. 1977).[40]

30. As a general matter federal law preempts state law when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Other courts have stated the test in slightly different language, but the concept remains one of federal supremacy over conflicting state laws or regulations. *See, e.g., Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (federal law will preempt state law when compliance with both federal and state law regulations is impossible); *Fidelity Federal Savings & Loan Co. v. de la Cuesta*, 458 U.S. 141 (1982) (nullifies state law to the extent that it actually conflicts with federal law). Moreover, in the communications field, the courts have acknowledged that our authority encompasses the power to preempt state regulation that substantially affects federal regulation of interstate communications or federal policy related thereto or when the dual use of the facilities renders separation for regulatory purposes impractical.[41]

31. Turning to the Cox petition, it is important, at the outset, to discuss several general arguments of the commenters opposing the Cox petition. First, they argue that the holding in *NARUC II* prevents this Commission from preempting state and local regulation over the use of cable system leased access channels used for two-way point-to-point, non-video communications. The holding in the *NARUC II* case was more narrow, however. Not only were the factual predicates of the decision different,[42] but also there was disagreement between the judges as to the reason for overturning the Commission. We agree with the commenters who assert that the only proposition for which *NARUC II* should be cited as precedent is that our decision to preempt in that case exceeded our jurisdication under the "ancillary to broadcasting" standard recognized in *United States v. Southwestern Cable Co.*, 392 U.S. 159 (1968). Our authority to preempt in this instance is not based upon our jurisdiction to regulate matters ancillary to broadcasting. Our actions are based upon our expansive ancillary federal authority over interstate wire communications, *see* 47 U.S.C. 152(a), and the effect that state regulation would have on various federal policies.

32. Second, the telephone companies argue that sections 2(b) and 221(b) of the Communications Act prevent the Commission from preempting state regulation in this case. Section 2(b) states only that nothing in the Act gives the Commission jurisdiction over "intrastate communications service . . . of any [common] carrier." Since we have found that Commline is not acting as a common carrier in this case, section 2(b) is inapplicable. *See NARUC I*, note 11 *supra*;[43] Likewise, section 221(b) does not affect the Commission's authority to preempt in this case. As the Commission stated in *AT&T*, FCC 85–368 (released July 25, 1985), section 221(b) "adds nothing to what is reserved to the states by the general exemption from Commission regulation . . . in section 2(b)(1) except as to local exchange service in cross-border exchange areas."[44]

---

of Pacific Telephone's total local service revenues, and competitive does not threaten the universal network, and competition may solve the problem of customer dissatisfaction with private line service being provided at that time. *See* California Public Utilities Comm'n Order, 84–06–113 (June 13, 1984).

[39] As noted above, MCI has been a customer of Commline for some time. Telephone Bypass News (April 1985) reports that Commline now is providing local distribution facilities for GTE/Sprint as well as MCI.

[40] Some have argued that the Commission does not have jurisdiction over the Commline facilities and services if they are found to be non-common carrier. However, the Court in United States v. Southwestern Cable Co., 392 U.S. 159 (1968), stated: "Nothing in the language of § 152(a), in the surrounding language, or in the Act's history or purposes limits the Commission's authority to those activities and forms of communication that are specifically described by the Act's other provisions." *Id.* at 172; *but see* NARUC v. FCC, 533 F.2d 601, at 612, 622 (Opinion of Judge Wilkey and concurring opinion of Judge Lombard, suggesting that Section 2(a) powres are contingent upon specifically delegated powers). We need not decide here whether Section 2(a) constitutes an independent source of jurisdiction over these facilities and services because the preemptive authority exercised herein is clearly ancillary to our Title III and Title II powers.

[41] *See* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198, 215 (D.C. Cir. 1982); NCUC I, *supra*.

[42] *See, e.g.*, the opinion of Judge Wilkey, which distinguished the facts of *NARUC* from those of *Southwestern Cable* on the basis that *Southwestern Cable* dealt with activity that, as in the case here, was "unquestionably interstate". *NARUC II* at 613, n. 69.

[43] Even if Commline were acting as a common carrier, we would not be precluded from preempting state regulation of the services. In NCUC I, note 11 *supra*, the Court stated:

"We have no doubt that the provisions of section 2(b) deprive the Commission of regulatory power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications. But beyond that, we are not persuaded that section 2(b) sanctions any state regulation formally restrictive only of intrastate communication that in effect encroaches substantially upon the Commission's authority under Section 201 through 205."

The reference to sections 201–205 reflects only that, in that case, state regulation relating to CPE interconnection would have violated this Commission's findings relevant to the reasonableness of certain tariff provisions. Of course, this Commission's power to preempt state action that substantially encroaches upon our authority over non-common carrier interstate communications is not triggered solely by state policies that impede our authority under sections 201–205, but may arise whenever any of our federal policies is impeded.

[44] Nor does section 621(d)(2) of the Cable Communications act of 1984 affect this Commission's authority to preempt in this case. That section provides that "Nothing in this title shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis." The legislative history makes clear that this section neither broadens nor narrows FCCor state jurisdiction over non-cable services. It states:

"It should be reiterated that it is the intent of Section 621(d) that with respect to non-cable communications services, both the power of any state public utility commission and the power of the FCC be unaffected by the provisions of Title VI. Thus, Title Vi is neutral with respect to such authority."

130 Cong. Rec. S124285 (daily ed. Oct. 11, 1984).

33. Finally, several commenters argue that this Commission cannot preempt state regulation of intrastate activities when the Commission itself does not regulate the facilities or services. There are many cases, however, in which federal preemption has been upheld when the federal policy is one of minimal regulation or forebearance. *See, e.g., Brookhaven Cable TV* v. *Kelly*, 573 F.2d 765 (2d Cir. 1978) (preemption of state price regulation of pay-cable upheld even though the FCC did not regulate pay cable prices); *Orthovision, supra* (preemption of regulation of MATV systems upheld even though the FCC does not regulate them); *Second Computer Inquiry*, not 13 *supra* (preemption of state regulation of CPE upheld even though the FCC had declined to regulate it).

34. With respect to the Commline services, we conclude that this Commission should preempt the Nebraska action requiring Commline to apply for a certificate of public convenience because the state action impermissibly infringes on federal policies. Because some of the Commline customers use the facilities for intrastate communications,[45] the Nebraska order, which only addresses intrastate service, did not exceed Nebraska state jurisdiction.[46] We find, however, that the Nebraska action has had and is likely to continue to have a substantial adverse effect upon interstate communications. Cox has presented evidence, and the evidence has not been convincingly rebutted, that the NPSC investigation of Cox has had an adverse effect upoon Commline's marketing and on the development of its services and business, including interstate access services, and that some customers have delayed taking service because of the NPSC actions.[47] In addition, the Nebraska statute relating to certificates of public convenience and necessity places a substantial burden on intities such as Commline.[48] In the event the application were denied, inefficient use of facilities would result which could lead to a severe increase in interstate costs because interstate charges would have to support the cost of the entire facility.[49] In addition, Cox testified before the Nebraska District Court that if the Nebraska order were not enjoined, Cox would shut down Commline's operations permanently.[50] Thus, we find that the Nebraska certification requirement has impaired, and likely will continue to impair, Commline's ability to provide interstate services.

35. We find that Nebraska's certification requirement conflicts with and obstructs several of our national communications policies. Both GTE/Sprint and MCI utilize Cox's cable facility to terminate their interstate telecommunications networks in Omaha. The state entry regulation inherently affects, and may even foreclose, use of these facilities by long distance service providers, and thereby frustrates the federal regulatory policies designed to facilitate competitive long distance services that we have promoted in our *Competitive Carrier Rulemaking*.[51] For almost two decades this Commission has been encouraging competition in the provision of interstate common carrier services.[52] These efforts have been designed to stimulate innovation, lower rates, increase diversity and encourage the efficient use of facilities.[53] Moreover, we have encouraged the interstate carriers to use alternative facilities and technologies in their systems.[54] Indeed, section 7(a) of the Act, 47 U.S.C. 157(a), requires us to encourage new developments and new technologies in communications. It provides that:

> It shall be the policy of the United States to encourage the provision of new technologies to the public. Any person . . . who opposes a new technology or services . . . shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

Commline and Cox are attempting to develop a means of providing interstate communications by originating and terminating interstate common carrier traffic for entities such as MCI.[55] The Nebraska state entry regulation presents a clear possibility of barring these services and precluding the new alternatives that this Commission has sought to foster. There appears to be no practical or economical means of preventing Commline's customers from using these facilities for both intrastate and interstate communications, *see* note 45 *supra*. Even if there is a feasible way of preventing Commline customers from using the facilities for intrastate communications, this would result in inefficient use of facilities and, because there are few users, increase the cost of the facilities to Cox's interstate customers. Such an increase in costs could—and Cox stated in its testimony before the District Court would—destroy the viability of the service. Thus, to

---

[45] It is unclear, however, how much of the communications on the Commline facilities is inter- or intrastate. Even the customers who Commline believes are using the facilities for intrastate service may be using the facilities for interstate communications through connection of the Commline facilities to a PBX or similar equipment on the customer's premises.

[46] The Nebraska statute gives the NPSC jurisdiction over both common carriers and contract carriers. *See* Neb. Rev. Stat. section 75-109.

[47] The district court found that "the uncertainty engendered by the NPSC investigation and order had deterred at least some potential customers from accepting commline Services." 569 F. Supp. at 517. Comments by other cable companies reveal similar experiences.

[48] The Nebraska statute provides that: "Before granting a certificate of convenience and necessity, the Commission must find that: [1] The territory in which the applicant proposes to offer telephone service is not receiving reasonable adequate telephone service, (2) the portion of the territory of another telephone company in which or into which the applicant proposes to construct new lines . . . is not and and will not within a reasonable time receive reasonably adequate telephone service . . . or [3] that the application is agreeable . . . to both telephone companies, . . . will not create a duplication of facilities, [and] is in the public interest." Neb. Rev. Stat. section 75-604. Regardless of whether the NPSC eventually grants the Commline application, the evidence shows that the state already interfered with Commline's provision of service.

[49] In an analogous situation in AT&T, 56 F.C.C.2d 14 (1975), *aff'd sub nom.* People of the State of California v. FCC, *supra*, this Commission stated:

> "Requiring the customer to maintain two redundant facilities or to invest in expensive additional equipment simply because of jurisdictional conflicts would violate our congressional mandate in Section 1 of the Communications Act to regulate 'interstate and foreign commerce in communication by wire or radio as as to make available, in communication by wire or radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient , nationwide and world-wide wire and radio communications service with adequate facilities at reasonable charges.'"

Id. at 19. *See also* AT&T [TWX], 38 FCC 1127 (1965).

[50] In its reply comments Rogers states that the May 9, 1983, issue of *Cablevision* Magazine reported that the Nebraska Public Service Commission had "indicated that issuance of . . . a certificate [to Commline] would be highly unlikely." Rogers, Reply at 7.

[51] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor, First Report and Order, 85 FCC 2d 1 (1980), Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), Fifth Report and Order, 98 FCC 2d 1191 (1984), Sixth Report and Order, 57 Rad. Reg. 2d (P&F) 1391 (1985), *vacated*, MCI Telecommunications Corp. v. FCC, No. 85-1030 (D.C. Cir. July 9, 1985). The court in *MCI v. FCC* only addressed the issue whether the Commission has authority under Title II to require carriers to cancel tariffs.

[52] *See, e.g.*, Specialized Common Carriers, 29 FCC 2d 870 (1971), *aff'd sub nom.* Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); Resale and Shared Use of Common Carrier Domestic Public Switched Services, 83 FCC 2d 167 (1981).

[53] *See, e.g.*, NARUC v. FCC, No. 83-1354 (D.C. Cir. Oct. 26, 1984).

[54] *See* Notice of Proposed Rulemaking and Inquiry in Digital Telecommunications Services (Gen. Docket No. 79-188), FCC 79-464 (August 29, 1979).

[55] Some have argued that preemption in this case might result in bypass of telephone company facilities and services. This Commission has not, however, sought to prevent all bypass. We have focused upon cost-based access charges as a means of ensuring only that bypass not justified by service or cost considerations be limited.

ensure that interstate services may be provided consistent with our federal policies, the state certification requirement must be preempted.

36. Moreover, Cox intends to utilize its intrastate institutional cable systems in conjunction with DTS facilities to provide its customers with interstate telecommunications facilities. We have previously authorized and encouraged the use of DTS for interstate communications.[56] In the *Fifth Report and Order* in the Competitive Carrier Rulemaking, 98 FCC 2d 1191, 1205–09 (1984), we determined that a policy of regulatory forebearance would help promote the entry and expansion of DEMS and DTS systems by relieving carriers of the costs and delay of required tariff filings, would help promote competition, and would benefit consumers. *Id.* at 1207. Indeed, we have already indicated our intention to preempt inconsistent state regulation of DTS facilities because such regulation would impede the development of interstate systems.[57] State entry regulation of institutional cable systems used with DTS facilities could impede efficient development of these various interstate communications systems.[58]

37. Additionally, since the inception of cable television this Commission has recognized and encouraged the use of cable facilities for services other than traditional cable services. For example, as early as 1972 in our *Cable Television Report and Order*, 36 FCC 2d 143 (1972), we recognized that cable systems were capable of providing "facsimile reproduction of newspapers, magazines, documents, etc.; electronic mail delivery; merchandising; business concern links to branch offices, primary customers or suppliers; access to computers," and many other services. *Id.* at 144 n. 10. Throughout the Commission's history of regulation of cable, it has consistently articulated a desire not to interfere with these new services and, in fact, to promote them. *See, e.g., Notice of Inquiry in Docket 18397*, 15 FCC 2d 417 (1968); *Cable Television Report and Order*, 36 FCC 2d 143, 190 (1972); *Clarification of Cable Television Rules*, 46 FCC 2d 175, 199–200 (1974); *Duplicative and Excessive Over-Regulation-CATV*, 54 FCC 2d 855 (1975).

38. Preemption of entry barriers will further another important federal policy. Spectrum for private microwave systems is now highly congested in some areas. *See First Report and Order* in Private Radio Docket No. 83–426, FCC 85–53 (released April 1, 1985).[59] Private cable systems may provide an important alternative to these congested microwave frequencies. Through encouraging the development of private cable systems we can better ensure "a rapid, efficient, nationwide . . . wire and radio communication service. . . ." 47 U.S.C. 151.

39. In sum, we find that if the Commission does not preempt the Nebraska certification requirement, it is likely that the Commline interstate services will be severely impeded, if they are able to develop at all. This would be inconsistent with the federal policies designed to foster the development of new services, a competitive interstate communications marketplace, and the construction of efficient interstate telecommunications systems.[60]

40. From the comments received in this proceeding, it appears that other cable companies in other states also are having problems similar to Commline's caused by state certification and other regulatory requirements. It also appears that state certification or other regulatory requirements that have the effect of barring entry into the intrastate provision of institutional services offered by cable television companies generally may have an impact upon and may impede the provision of interstate services by these companies. Any state regulation of institutional services offered by cable companies that acts as a *de facto* or *de jure* barrier to entry into the interstate communications market or to the provision of interstate communications must be preempted.[61] At the same time, we recognize there may be instances in which cable companies wish to provide only intrastate service or in which a cable company's ability to provide intrastate service would have little impact upon its ability to provide interstate service. In those cases the federal interest in a state certification requirement would be less. In this order, we do not address those situations in which state regulation would have no effect upon the provision of interstate service. State regulation that does not act as a barrier to the provision of interstate communications may stand.[62]

---

[56] In 1981, the Commission allocated radio spectrum for nationwide common carrier digital transmission networks (DEMS systems) providing high-speed, two-way transmissions. The intercity links of these networks employ satellite, microwave, fiber optics, or cable facilities, and the intracity facilities include digital termination systems (DTS) and internodal links.

[57] Digital Termination Systems, 86 FCC 2d 360, 389–90 (1981), *aff'd sub nom.* National Association of Regulatory Utility Comm'n v. FCC, 727 F.2d 1212 (D.C. Cir. 1984).

[58] The analogy between the provision of institutional interstate cable services and DTS can also be extended to the provision of Master Antenna Television (MATV) facilities. In utilizing its facilities to complete MCI's communications, Cox receives common carrier communications and then directs them over private facilities for completion. The reverse would also occur. This is analogous to what occurs when non-common carrier MATV facilities receive programming from multipoint distribution service carriers and then carry the programming to the MATV operator's customers. The Commission has previously preempted state regulation of MATV facilities because such regulation interfered with the interstate common carrier MDS services. *See* Orthovision, 69 FCC 2d 657 (1978), *reconsideration*, 82 FCC 2d 178 (1980), *aff'd sub nom.* New York State Comm'n on Cable Television v. FCC, 699 F.2d 58 (2d Cir. 1982); *see also* Earth Satellite Communications, Inc., FCC 83–526 (released November 17, 1983), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 749 F.2d 804 (D.C. Cir. 1984). Because Cox is terminating common carrier interstate traffic for MCI, this case has many of the same factual predicates as *Orthovision*.

[59] *See also First Report and Order*, Docket 82–334, 54 Rad. Reg. 2d 1001, 1003 (1983); *Public Notice*, Mimeo No. 35464 (released January 15, 1985) (lottery for 2.5 GHz channels); *Lottery Notice*, Mimeo No. 2429 (released February 7, 1985) (lottery for multiple address channels).

[60] We are mindful of the argument raised by the telephone companies that it is not fair to allow cable companies to provide services similar to services provided by the telephone companies if the cable companies are not subject to the same regulatory constraints as the telephone companies. With respect to our actions here, however, that argument holds little weight because the telephone company already is certificated, to the extent necessary, to provide services over its facilities that are most analogous to the cable facilities.

[61] A statutory requirement that only one company may provide "telephone services" in any given geographical area, coupled with a finding that the provision of institutional cable is the provision of "telephone services" is an example of a *de jure* barrier to entry. Any state regulation which treated certification as more than a ministerial act would be considered a *de facto* entry barrier, *i.e.*, a public need showing which would require a cable company to conduct interviews with businesses or provide demographic studies; or burdensome service provision regulation, such as, financial or character qualifications, if different from telephone company requirements. We recognize, however, that there may be matters relevant to the legitimate interests of states that may develop during the entry stage. To the extent that state regulation of such matters does not in any way have the effect of prohibiting or impeding entry into interstate markets, we do not propose preemption. For example, matters such as notice, zoning, health and safety may be regulated so long as the effect of such regulation is not to prohibit or impede entry. In addition, it may be necessary that states be notified of the fact that an entity is about to begin operation in order that the state can then exercise its legitimate post entry authority.

[62] Based on the comments in this proceeding we are unable to determine the effect state rate or other economic regulation would have upon interstate communications or federal law or policies. Cox argues that it is not possible to segregate interstate and intrastate use of its facilities for ratemaking purposes. The comments of the telephone companies dispute this and state that the telephone companies currently conduct usage studies for separations purposes on those facilities most closely resembling Commline's facilities. Thus, there is clearly a factual dispute as to the feasibility of separating traffic for ratemaking purposes and we do not rule on whether, in particular circumstances, this Commission would preempt state rate or other

Continued

41. We are hopeful that this general policy statement will serve as a guide to the states in their consideration of regulatory programs to be applied to transmission services similar to Commline's. However, we recognize that parties may need to bring specific situations to our attention. We are prepared to rule on specific situations on a case-by-case basis.

III. Conclusion

42. Nebraska's ordering of Commline to cease and desist from providing intrastate services until it first obtains a state certificate of public convenience makes it unlikely that Commline can successfully provide interstate service or provide the kinds of non-video services we have found cable systems should provide. Therefore, we shall preempt the prior state certification requirements imposed by the NPSC. As noted above, *supra* para. 40, we have made the finding that any state regulation of institutional services offered by cable companies that acts as a *de facto* or *de jure* barrier to entry into the interestate communications market must be preempted.[63]

43. Accordingly, it is ordered, that the petition for declaratory ruling filed by Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc. is granted to the extent indicated herein and is otherwise denied.

44. It is further ordered that the Secretary shall cause a copy of this decision to be printed in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

August 7, 1985.

Dissenting Statement of Commissioner James H. Quello

In re: Petition for Declaratory Ruling filed by Cox Cable Communications, Inc., File No. CCB-DFD-83-1, seeking Commission preemption of state and local regulation of facilities located wholly within one state and used to originate or terminate interstate communications

I am not prepared to argue, at this point, that the majority has overstepped its authority in preempting entry regulation although that well might be the case. My concern rests with the policy established in this proceeding which seems to say to the states that we will preempt only a little now but stand ready to go further if the states exercise their perogatives to regulate these new carriers.

It isn't clear to me what significant national policy is to be furthered by forcing the states to accept bypass technology while this Commission remains unable to implement significant strategies to make bypass unattractive. Until we can remove the subsidy that flows to local ratepayers, benefits will continue to accrue to those who can avoid paying the subsidy. By its action, the majority has introduced a technology with significant potential to do what the Commission's attenuated subscriber line charge was designed to prevent.

Not to worry, say the proponents of preemption, the cable industry merely wants to provide "broadband" data services, an insignificant contributor to exchange revenues. If this Commission doesn't understand by now that the money is in message telephone service, its institutional memory has been ravaged by some dread malady. And, like Willie Sutton, the new entrants in the local exchange market will simply and unerringly go where the money is.

The states have the incentives to take whatever steps are necessary to prevent serious damage to the local exchange, and I believe that they should retain the means. Therefore, I dissent.

[FR Doc. 85-21974, Filed 9-12-85; 8:45 am]

BILLING CODE 6712-01-M

---

economic regulaiton of Commline/type services. However, economic regulaiton could become a barrier to entry, and thereby be eligible for preemption if, for example, cable companies were subjected to it and telephone companies were exempted for provision of the same type of service.

[63] We decline to rule upon Northwestern's request that we clarify the applicability of the pole attachment rules to the Commline services. *See* note 24 *supra*. We have received no comments on this issue from other parties and therefore do not believe that it is appropriate to rule on that question at this time.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-058.

Title: American West African Freight Conference.

Parties:

America-Africa Line, Ltd.
Barber West Africa Line
Cameroon Shipping Lines
Farrell Lines, Inc.
Maersk Line
Portline
Societe Ivoirienne de Transport Maritime
Torm West Africa Line
Westwind Africa Line, Ltd.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's regulations concerning form and format. It would also add Portline as a party to the agreement, delete Companhia Nacional de Navegacao from agreement membership and admit Cameroon Shipping Lines as a full member of the agreement. This amendment replaces amendment 57, previously withdrawn by the parties.

Agreement No.: 207-009882-004.

Title: Pacific Australia Direct Line Joint Service Agreement.

Parties:

Associated Container Transportation (Australia) Ltd.
Rederiaktiebolaget Transatlantic

Synopsis: The proposed amendment would modify the agreement to (1) delete PAD Shipping Australia Pty. Ltd. as a party to the agreement; (2) extended the date upon which the parties may give notice of termination of the agreement from June 30, 1985 to December 31, 1985; and (3) restate the agreement to conform with the Commission's format, organization and content requirements. It would also make certain nonsubstantive changes to the language of the agreement.

Agreement No.: 212-010286-006.

Title: Italy-U.S.A. North Atlantic Pool Agreement.

Parties:

Costa Armatori, S.p.A.
Jugolinija
Nedlloyd Lines
Zim Israel Navigation Co., Ltd.
Farrell Lines, Inc.
Medamerica Express Service
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the agreement to postpone the pool period which was scheduled to begin on September 1, 1985 until October 1, 1985. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 10, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-21928 Filed 9-12-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Foot's Transfer & Storage Co., Ltd.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1813
Name: Foot's Transfer & Storage Co., Ltd.
Address: 24701 Frampton Avenue, Harbor City, CA 90710
Date Revoked: August 21, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2293
Name: Dan Beadle dba Dan Beadle Customs House Broker
Address: 609 Fannin, #1421, P.O. Box 52602, Houston, TX 77002
Date Revoked: August 23, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2835
Name: Midwest Overseas Trading Corporation
Address: 1321 N. 37th Place, Milwaukee, WI 53208
Date Revoked: August 31, 1985
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-21929 Filed 9-12-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; K.J. Segall Customhouse Broker

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date reissued
2665	Katherine J. Segall, dba K.J. Segall, Customhouse Broker, 1520 State Street, #231, San Diego, CA 92101	Aug. 19, 1984

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-21930 Filed 9-12-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Rock-It Cargo, U.S.A. Inc, et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Rock-It Cargo, U.S.A. Inc., 5432 W. 104th Street, Los Angeles, CA 90045, Officers: Stephen W. Roper, President, Christopher Wright, Stockholder, Michael Porciello, Stockholder, Ian F. Haynes, Stockholder

Gabriel R. Soto, dba General Express Management, 1251 N.E. 141st Street, North Miama, Florida 33161

Jebco International, Inc., P.O. Box 63, Green Village, NJ 07935, Officer: Jay E. Bowlby Jr., President/Sole Officer

Cargonet (N.Y.) Inc., 145 Hook Creek Blvd., Valley Stream, NY 11581, Officers: Ari Van Donge, President, Dorothy Player, Vice President/Secretary/Treasurer, Martinus Robertus Van Der Meer, Chairman of the Board.

By the Federal Maritime Commission.

Dated: September 10, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-21931 Filed 9-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by OMB

September 9, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. Report title: Report on Loans Granted to Executive Officers During Preceding Quarter
Agency form number: FR 2105S
OMB Docket number: 7100-0049
Frequency: Quarterly
Reporters: All state member banks
Small businesses are affected
General description of report:

This information collection is mandatory [12 U.S.C. 375a] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report provides information from all state member banks on the number of, total dollar amount of, and range of interest rates concerning loans to their own executive officers. The information provided is for the activity of the same quarter as the Call Report to which it is attached.

Board of Governors of the Federal Reserve System, September 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21911 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

First Railroad & Banking Company of Georgia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Florida*, Augusta, Georgia; to acquire 100 percent of the voting shares of Gwinnett Bank & Trust Company, Norcross, Georgia.

2. *Gulf & Southern Corporation*, Fort Myers, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Lee County, Fort Myers, Florida.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Downstate Bancshares, Inc.*, Murphysboro, Illinois; to acquire 100 percent of the voting shares of First National Bank of Grand Tower, Grand Tower, Illinois.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21909 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

Norstar Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp, Inc.*, Albany, New York; to engage *de novo* through its subsidiary, Norstar Trust Company, Rochester, New York, in performing functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature in the manner authorized by federal or state law, provided that the company will not accept deposits and will not make loans or investments other than call loans to securities and purchasing money market instruments such as certificates of deposit, commercial paper, government and municipal securities, and banks' acceptance (which loans and investments will not be used as a method of channeling funds to nonbanking affiliates of the company.)

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.*, Cincinnati, Ohio; to engage *de novo* through its subsidiary, Praxis Capital Management, Inc., Cincinnati, Ohio; in the nonbanking activity acting as an investment advisor, as permitted under Regulation Y, section 225.25(b)(4). Company will in addition provide portfolio investment advice to other persons and furnish general economic information and advice, general economic statistical forecasting services and industry studies. Comments on this application must be received not later than September 27, 1985.

Board of Governors of the Federal Reserve System, September 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21910 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of

Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 6, 1985.

Public Health Service

Food and Drug Administration

Subject: Exempt Infant Formulas—Revision—(0910–0158)
Respondents: Infant Formula Manufacturers

Alcohol, Drug Abuse, and Mental Health Administration

Subject: Alcohol, Drug Abuse, and Mental Health Services Block Grant Reporting Requirements—Revision—(0930–0080)
Respondents: State/local governments

Office of the Assistant Secretary for Health

Subject: National Medical Expenditure Survey—Inventory of Long-Term Care Places—Revision—(0937–0153)
Respondents: State/local governments, businesses, federal agencies, non-profit institutions, small businesses
Subject: Evaluation of National Cause-of-Death Data-Pilot Study—Revision—(0937–0133)
Respondents: Individuals or households, state/local governments, businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations

National Institutes of Health

Subject: Biomedical Research Support Grant Application and Annual Progress Report—Extension—(0925–0008)
Respondents: Applicants for Biomedical Research Grants
OMB Desk Officer: Bruce Artim

Centers for Disease Control

Subject: Malaria Survey Among U.S. Travelers—Reinstatement—(0920–0154)
Respondents: Individuals or households
Subject: Reproductive Study of Women Who Work With Video Display Terminals—New
Respondents: Individuals or households

Health Resources and Services Administration

Subject: Application to Participate in the Health Professions Capitation Program—Extension—(0915–0089)
Respondents: Schools of Public Health Service
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Quarterly Report of Collections—OCSE 34—Extension—(0960–0238)
Respondents: States
Subject: Acknowledgement of Offer of Interview—SSA–311—New
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer)

Dated: September 9, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–21920 Filed 9–12–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 85F–0288]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3847) has been filed by Betz Laboratories, Inc., Trevose, PA 19047, proposing that § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: September 5, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–21890 Filed 9–12–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0384]

Canned Spinach Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to The Larsen Co. and Continental Can Co., Inc., to market test experimental packs of canned spinach containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 12, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–124), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to The Larsen Co., 520 North Broadway, P.O. Box 19027, Green Bay, WI 54307–9027, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned spinach. The test product deviates from the standard of identity for canned spinach (21 CFR 155.200) in

that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.200, with the exception of this deviation.

The permit provides for the temporary marketing of 300,000 cases of the 307 x 306 (12½ oz) size can and 100,000 cases of the 603 x 700 (number 10) size can of the test product. The test product will be distributed in the continental United States.

The test product is to be manufactured at The Larsen Co. plants located in Fort Atkinson and Hortonville, WI.

The principal display panel of the label states the product name as "Cut Leaf Spinach." Each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 12, 1985.

Dated: September 9, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-21891 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Programs for Physician Assistants

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986, Grants for Programs for Physician Assistants are being accepted under the authority of section 783(a) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingeny action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

Funding preference will be accorded approved applications with projects in which:

1. A program is conducted for training physician assistants to provide primary care patient services under the supervision of a doctor of medicine or osteopathy; and/or

2. Substantial training experience is provided in a health manpower shortage area(s), as defined in section 332 of the PHS Act, or in an area health education center funded, at least in part, under section 781 of the Act; and/or

3. A program is established in a State which does not have such a program; and/or

4. A program is conducted in conjunction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960

Questions regarding programmatic information should be directed to: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-6817

The application deadline date is October 18, 1985. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 9, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-21948 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-16-M

Application Announcement for Cooperative Agreements for Area Health Education Center Programs

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications are now being accepted for Fiscal Year 1986 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with needs of the program as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result for currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center

cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 97, Subpart MM.

Funding Preference

In making awards for Fiscal Year 1986, the following funding preference is established. This preference was published in a **Federal Register** notice dated January 24, 1985.

(1) Competing continuation applications

(2) Planning and development projects under Section 781(a)(1) and

(3) Supplements to existing awards.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U-76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6950.

Questions regarding programmatic information should be directed to: Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-05, Rockville, Maryland 20857, Telephone: (301) 443-6857.

The application deadline date is November 15, 1985. Applications will be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 9, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-21947 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-16-M

Maternal and Child Health Research Grants Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1985.

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: November 6-8, 1985, 9:00 a.m.-5:00 p.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on Wednesday, November 6, 1985 at 9:00 a.m. to 10:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 6, 1985, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other releveant information should write to or contact GONTRAN LAMBERTY, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301-443-2190.

Agenda items are subject to change as priorities dictate.

Date: September 10, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-21949 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancy; Osage Tribal Education Committee

September 3, 1985.

25 CFR 122.5(e)(5) states that any vacancies shall be filled in the same manner described by this section for the selection of committee members. The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for this vacancy.

This notice announces that a vacancy has occurred on the Osage Tribal Education Committee. This vacancy is the Member At Large Representative.

The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations must be made no later than 30 days from the publishing date of this notice and shall be mailed to: Assistant Secretary-Indian Affairs, Attention: Director, Office of Indian Education Programs, Code 500, 18th & C Streets, NW., Washington, DC. 20240.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-21958 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer,

Washington, D.C. 20503, telephone 202–395–7313.

Title: Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill sites, or Tunnel Sites.

Abstract: Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) requires that all locations of mining claims, mill sites, and tunnel sites under the Mining Law of 1872, as amended, be recorded with the Bureau of Land Management within 90 days of their location. The statute also requires that each calendar year after the mining claims are located the, owner shall file with the Bureau either an affidavit of annual assessment work or a notice of intent to hold by December 30. Failure to record the mining claim or site or failure to submit an annual filing foreach mining claim causes the mining claim or site to be declared statutorily abandoned, and therefore void.

Bureau Form Number: None; a copy of the original certificate or notice of location and/or annual proof of assessment work or notice of intent to hold.

Frequency: Respondent records each mining claim or site only once in the proper Bureau office. For each mining claim or site recorded, the respondent must file each year a copy of the affidavit of assessment work or a notice of intent to hold in order to keep the mining claim or site active.

Description of Respondent: Respondents may range from individuals to multi-national corporations.

Annual Responses: 1,100,000.

Annual Burden Hours: 91,630.

Bureau Clearance Officer: Rebecca Daugherty, 202–653–8833.

James M. Parker,

Acting Director, Bureau of Land Management.

August 30, 1985.

[FR Doc. 85–21959 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–85–M

Iditarod National Historic Trail Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations to the recently re-chartered Iditarod National Historic Trail Advisory Council. The council serves to advise the Secretary of the Interior, through the Director, Bureau of Land Management, with regard to implementation of a comprehensive management plan for the Iditarod National Historic Trail, Alaska.

Of the 11 members comprising the council, several may be nominated by the public to represent corporation and individual land owners, and land users.

Council members will be appointed for two-year terms. At the discretion of the Secretary of the Interior, members may be reappointed to additional terms, but not to exceed a total of six years.

All members serve without salary but may be reimbursed for travel and per diem expenses.

Nominatins should include the individual's name, address, area of representation, and qualifying background. They should be submitted to: Anchorage District Office, BLM, Attention: Joette Storm, 4700 East 72nd Avenue, Anchorage, Alaska 99507–2899.

FOR FURTHER INFORMATION CONTACT: Public Affairs (907) 267–1200.

Wayne A. Boden,

District Manager.

[FR Doc. 85–21960 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–JA–M

[CA–17015]

Realty Action; Exchange; Public Lands in Humboldt County, CA

The following described public land has been determined to be suitable for disposal under the provision of Pub. L. 91–476, an act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 3 S., R. 1 E.,
Sec. 34: SW¼NW¼, NW¼SW¼.
Containing 80 acres total.

Kermit Miller, 244 Orchard Lane, Redway, California 95560, has applied to acquire the above described lands in exchange for the following described privately owned lands:

Humboldt Meridian

T. 3 S., R. 1 E.,
Sec. 30: NE¼NW¼.
Containing 40 acres total.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the Federal Register shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of this exchange is to acquire non-federal lands within the King Range National Conservation Area and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. This exchange is in conformance with Bureau planning and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participating, is available for review at the Arcata Area Office, BLM, 1125 16th Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, Rm. E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

Van W. Manning,

District Manager, Bureau of Land Management, Ukiah District, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482.

[FR Doc. 85–21961 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–84–M

[NM 60310]

Realty Action; New Mexico

Realty Action: Direct Sale of Public Lands; Eddy County, New Mexico. The Bureau of Land Management is proposing to dispose of the following described public lands by direct sale in compliance with the procedures of 43 CFR Part 2700 at no less than the fair market value as determined by appraisal.

Tract No.	Legal description	Acreage	Fair market value	Purchaser
	T. 17 S., R. 30 E., N.M.P.M.			
1	Sec. 20, lot 5	.93	$2,050	O.K. Hot Oil Service
2	Sec. 21, lots 16, 17, 18	3.89	6,100	Hope Entp., Inc.
3	Sec. 21, lots 19, 20	2.29	2,725	Elwyn Peterson
4	Sec. 21, lots 65-69,S½ NW¼ SE¼ SW¼, S½, NE¼ SW¼ NE¼ SW¼, SE¼ SW¼ NE¼ SW¼, SW¼ SE¼ NE¼ SW¼	11.49	18,100	Anadarko Prod. Co.

The area described aggregates 19.16 acres in Eddy County, New Mexico. The lands are being offered by direct-noncompetitive sale to the following proponents: Anadarko Oil, O.K. Hot Oil Service, Hope Enterprises, Inc., and Elwyn Peterson. Lands in Tract No. 1 are currently vacant and adjacent to the O.K. Hot Oil Service. Lands in Tract No. 2 are being utilized for oil field equipment storage by Hope Enterprises, Inc. Lands in Tract No. 3 are occupied by Mr. Elwyn Peterson and Mr. William Curtis who work for Hope Enterprises in Loco Hills. Tract No. 4 is currently occupied by Anadarko Production Company as authorized by their 1934 lease number LC-029342(a).

All of the described tracts are within the town site of Loco Hills and adjacent to private land. Disposal by direct sale will legalize the occupancy of this land, protect the investments of the oil service industries, eliminate any undue hardship if the occupants were required to remove their improvements, make land available for future industrial growth, and rid the United States of small, difficult to manage tracts of public land because of their physical characteristics and private ownership of adjoining lands.

The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2710.0-3(a) and 43 CFR 2711.3-3(2) (2/3/4/5).

The terms and conditions and reservations applicable to this sale are:

1. The patents will include a reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 USCA 946.

2. The sale of these lands will be subject to all valid existing rights.

3. All minerals together with the right to prospect for, mine, and remove under applicable laws, and such regulations as the Secretary may prescribe will be reserved to the United States (43 U.S.C. 1719).

4. Payment of no less than one-fifth of the full sale shall be made as a deposit at the time of sale. Purchasers shall submit the remainder of the full sale price prior to the expiration of 180 days from the date of sale. Failure to submit the full price prior to but not including the 180th day following the day of the sale, shall result in cancellation of the sale of the specific tract and the deposit shall be forfeited.

Continuing sale of public land tracts not sold pursuant to this notice shall remain available for sale at or above fair market value competitive bidding basis for a period of three months after full payment is due. Sealed bids marked plainly on the envelope as "Loco Hills Sealed Bid" will be opened each Wednesday at 10:00 AM local time after the full payment due date has expired.

Public documents concerning land use plans, decisions, environmental documentation, land report analysis, record of public comments and involvement and appraisal are available for inspection at the address given below.

The sale will be conducted at the Carlsbad Resource Area Headquarters, 101 East Mermod Street, Carlsbad, New Mexico 88220 at 2:00 PM on November 5, 1985.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 1717 West Second Street, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Francis R. Cherry,

District Manager.

[FR Doc. 85-21964 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1562; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H; Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual 220.2.1 G), and Secretarial Order 3071, the following described lands are hereby deleted from Lightning Dock, Radium Springs, and Socorro Peak KGRA's effective June 6, 1985.

(31) New Mexico.

Lightning Dock Known Geothermal Resource Area

New Mexico Principal Meridian, New Mexico

T. 24 S., R. 19 W.,
Sec. 8;
Sec. 19, lot 4, SE¼NW¼, and SE¼SW¼;
Sec. 20, N½NE¼, SE¼NE¼, and S½SW¼;
Sec. 29, NW¼NW¼, S½NW¼, and S½;
Sec. 30, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

The deleted area aggregates 1885.42 acres, more or less.

Radium Springs Known Geothermal Resource Area

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 1 W.,
Sec. 1, lots 1 to 8, inclusive, N½N½, and S½;
Sec. 12, E½.

The deleted area aggregates 990.88 acres, more or less.

Socorro Peak Known Geothermal Resources Area

New Mexico Principal Meridian, New Mexico

T. 4 S., R. 1 W., N.M.P.M.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lot 2, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, SW¼NE¼, S½NW¼, and W½SE¼;
Sec. 9.
T. 3 S., R. 2 W., N.M.P.M.,
Sec. 1, lots 1 to 8, inclusive, S½NE¼, SE¼NW¼, and S½;
Sec. 10;
Sec. 12;
Sec. 13, E½, E½W½, W½NW¼, and SW¼SW¼;
Secs. 14 and 15;
Secs. 22, 23, and 24;
Sec. 25, NE¼NE¼, S½NE¼, W½W½, SE¼SW¼, and SE¼;
Sec. 26, N½ and SE¼;
Sec. 27;
Sec. 34;
Sec. 35, S½N½ and S½.
T. 4 S., R. 2 W., N.M.P.M.,
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 4, S½.

The deleted area aggregates 11,064.28 acres, more or less.

The subject lands will be made

available to the first qualified applicant under regulations appeàring in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Charles W. Luscher,

State Director.

[FR Doc. 85-21962 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-FB-M

[U-53819—U-53823]

Realty Action; Sale of Public Lands; Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, U-53819, U-53820, U-53821, U-53822, U-53823, Sale of Public Lands in Emery County, Utah.

SUMMARY: The following described parcels of public land have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713). Sale will be at no less than fair market value.

Parcel No.	Serial No.	Legal description	Acres	Fair market value	Bidding procedure	Terms and conditions
		Salt Lake Meridian:				
1	U-53819	T. 16 S., R. 10 E., Sec. 19, SW¼SE¼	40.0	$3,600	Modified competitive	1, 2, 3.
2	U-53820	T. 16 S., R. 10 E., Sec. 21, W½NE¼, N½NW¼, NW¼SE¼	200.0	20,000	Competitive	1, 2, 3, 4a, 4b.
3	U-53821	T. 16 S., R. 10 E., Sec. 27, NE¼NE¼	40.0	6,000	do	1, 2, 3, 4c.
4	U-53822	T. 17 S., R. 9 E., Sec. 1, Lot 4	40.68	5,100	Direct	1, 2, 3, 4d, 4f, 5, 6.
5	U-53822	T. 17 S., R. 9 E., Sec. 1, S½NW¼	80.0	10,000	Competitive	1, 2, 3, 4f, 4j.
6	U-53823	T. 16 S., R. 9 E., Sec. 25, SE¼NE¼	40.0	6,000	Direct	1, 2, 3, 4e, 4g, 4h, 4i, 4k.

Sealed bids will be accepted at the Price River Resource Area Office, P.O. Drawer AB, 900 North 700 EAst, Price, Utah 84501 until 11:00 a.m. on November 19, 1985. At that time, the bids will be opened. Oral bidding, if required, shall be held immediately followign the opening of sealed bids.

Any of the indentified parcels not sold on the sale date, will remain available for sale over the counter until February 25, 1986, unless sold or withdrawn from the market. Sealed bids will be accepted at the Price River AReA Office durign regular business hours, 7:45 a.m. to 4:30 p.m. Sealed bids will be opened the second and last Tuesday of each month at 11:30 a.m.

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Parcel Number 1 will be offered for sale through modified competitive bidding. Mr. Harold Alger, Sunnyside, Utah, and Corey and Jill Hansen, Elmo, Utah, adjoining land owners, will have a preference right to meet the high bid.

Parcels Number 4 and 6 will be offered to the Castle Valley Special Service District, Castle Dale, Utah. Direct sale procedures will be used.

Terms and Conditions of the Sale

1. All minerals, including oil and gas, will be reserved to the United States with the right to prospect, explore, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the above office.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of record.

4. Existing rights and privileges of record include:

a. Oil and gas lease U-53568

b. Grazing permit held by Dennis and Pauline McDougal valid until December 20, 1986.

c. County Road 7107

d. Right-of-way U-52813

e. Right-of-way U-54672

f. Washboard Allotment grazing permits valid until March 20, 1987.

g. Right-of-way U-53812

h. Right-of-way U-53808

i. Right-of-way U-01758

j. Oil and gas lease U-34161

k. Oil and gas lease U-34164

5. A 20-foot wide right-of-way will be reserved along the north boundary line of Lot 4 for a stock trail.

6. A 20-foot wide right-of-way will be reserved along the east boundary line of Lot 4 for a road.

The successful bidders on parcels 2 and 4 agree that they take the property subject to existing grazing uses. The privilege of the permittees to graze domestic livestock on the property according to the conditions on authorizations No. 4012 and No. 4115 shall cease on December 20, 1986, and March 20, 1987, respectively. The successful bidder is entitled to receive annual grazing fees from the permittees in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

Additional information concerning the land, terms and conditions of sale, and bidding instructions may be obtained from Mark A. Mackiewicz, Area Realty Specialist at the above address, (801) 637-4584, or Brad Groesbeck, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Upon publication of this Notice of Realty Action, the lands will be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from the date this Notice is published in the **Federal Register,** whichever occurs first.

Dated: September 5, 1985.

Gene Nodine,

District Manager.

[FR Doc. 85-21965 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-DQ-M

[A-20346-H]

Realty Action: Exchange of Public Lands, Maricopa County, AZ

Correction

In FR Doc. 85-20072, beginning on page 34012 in the issue of Thursday, August 22, 1985, the second line of the land description (last line of column 3, page 34012) should have read:

Secs. 3, 12 and 23.

BILLING CODE 1505-01-M

Fish and Wildlife Service

Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Yukon Flats National Wildife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes five strategies for long-term management of the 8.47 million acre refuge. The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATE: Remarks on the draft CCP/EIS must be submitted on or before December 6, 1985 to receive consideration by the Regional Director.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft comprehensive plan will be sent to all persons, organizations, and agencies which participated in either scoping, the alternative workshop, and/or the public review process. Copies of the draft CCP/EIS have been sent to all agencies and persons who have already requested copies. Those wishing to review the draft document may obtain a copy by contacting Mr. Knauer.

Copies of the draft CCP/EIS are available for public review at the above location; at the Yukon Flats National Wildlife Refuge Office, Federal Building, 101-12th Avenue, Fairbanks, Alaska; and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, Interior Building, 18th and C Streets, NW, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Yukon Flats National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include management of fish and wildlife populations and habitats; access and transportation; trapping; subsistance use on the refuge; oil and gas development; recreational use of the refuge; and wilderness management.

The draft CCP/EIS describes five alternatives for long-term management of the refuge including one that would continue current management (the no action alternative). The other four alternatives cover a broad spectrum of management emphasis, ranging from maximum to minimum use of refuge resources. A preferred alternative, representing the FWS's preferred management stralegy for the refuge, is identified.

The plan also describes the general wilderness suitability of 8.47 million acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the September 2, 1982, **Federal Register**. Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review.

Dated: September 5, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-21955 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Monday, October 7, 1985, at The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn, Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations. A presentation of the final recommendations for the Development Program/Advisory Commission Study will be made.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman.
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404/221-5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: September 3, 1985.

Robert M. Baker,

Regional Director Southeast Region.

[FR Doc. 85-21941 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Nestlé Holdings, Inc., c/o Nestlé Enterprises, Inc., 5757 Harper Road, Solon, Ohio 44139 (a Delaware corporation).

2. Wholly owned subsidiaries (and their respective divisions and subsidiaries) which will participate in the operations and their respective states of incorporation:

a. Carnation Company, 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation). Carnation Company includes certain divisions who operate under the names of Trenton Foods Division, Seaboard Carton Division, and Herff Jones Division.

In addition, wholly owned subsidiaries of Carnation Company include:

(1) Dayton Reliable Tool And Mfg. Co., Inc., 618 Greenmont Blvd., Dayton, Ohio 45419 (an Ohio corporation);

(2) Contadina Foods, Inc., 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation);

(3) Carnaco Transport, Inc., 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation).

b. Nestlé Foods Corporation, 100 Bloomingdale Road, White Plains, NY 10506 (a New York corporation). In addition, wholly owned subsidiaries of Nestlé Foods Corporation include:

(1) Cain's Coffee Co., 13131 Broadway Ext., Oklahoma City, Oklahoma 73114 (a Delaware corporation); and

(2) Paul F. Beich Company, 101 South Lumber Street, Bloomington, Illinois 61071 (an Illinois corporation).

c. Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139 (a Pennsylvania corporation).

d. Beech-Nut Nutrition Corporation, 1035 Virginia Drive, Fort Washington, PA (a Delaware corporation).

e. Hills Bros. Coffee, Inc., Two Harrison Street, San Francisco, CA 94105 (a Delaware corporation).

f. Libby, McNeill & Libby, Inc., 200 Michigan Avenue, Chicago, IL 60604 (a Delaware corporation). In addition, wholly owned subsidiaries of Libby, McNeill & Libby, Inc. include: (1) Libby's Fresh Food Company, 300 East Crittenden Boulevard, Groveland, FL 32736 (a Delaware corporation).

1. Parent Corporation and Address of Principal Office:

Cooper Industries, 1st City Tower, 1001 Fannin Street, P.O. Box 4446, Houston, Texas 77210

2. Wholly-owned subsidiaries which will participate in the operations principal address and state(s) of incorporation:

McGraw Edison Company, 420 Rouser Road, Airport Office Park, Building No. 3, Caraopolis, Pennsylvania 15108, P.O. Box 2850, Pittsburgh, Pennsylvania 15230-2900, Incorporated in Pennsylvania

Divisions of McGraw Edison Company

Bussman Division, Ellisville, Missouri, P.O. Box 14460, St. Louis, Missouri 63178

Halo Lighting Division, 400 Busse Road, Elk Grove Village, Illinois 60007

Onan Corporation, 1400-73rd Avenue, NE., Minneapolis, Minnesota 55432, Incorporated in Minnesota

1. The parent corporation and principal office is Gallipolis Parts Warehouse, Inc., 210 Upper River Road, Gallipolis, Ohio 45631.

2. Listed below are wholly-owned subsidiaries which will participate in the operations:

Name of corporation	State of incorporation
Gallipolis Parts Warehouse, Inc., D/B/A United Automotive Warehouse.	West Virginia.
Gallipolis Parts Warehouse, Inc., D/B/A Central Ohio Parts Warehouse.	Ohio.

James H. Bayne,

Secretary.

[FR Doc. 85-22100 Filed 9-12-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Meeting

Date and time: October 15, 1985, 7:30 p.m.-10:30 p.m.
Place: Hall of Administration, ERC Room 374, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received and (3) Any other relevant matters

Hearing

Date and time: October 16, 1985, 8:30 a.m.-7:30 p.m.
Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
8:30 a.m., Opening of Fourth Public Hearing—Welcoming remarks;
8:40 a.m.-12:30 p.m., Testimony of witnesses and examination by Commissioners; 1:30 p.m.-7:30 p.m., Testimony of witnesses and examination by Commissioners

Meeting

Date and time: October 16, 1985, 8:00 p.m.-10:00 p.m.
Place: Hall of Administration, ERC Room 374A, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

Hearing

Date and time: October 17, 1985, 8:30 a.m.-7:30 p.m.

Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered at meeting:
8:30 a.m.–12:00 noon, Testimony of witnesses and examination by Commissioners; 1:30 p.m.–7:30 p.m., Testimony of witnesses and examination by Commissioners. At the conclusion of the last witness' testimony, the Commission may conduct a meeting
Matters to be considered at meeting:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 400 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the meetings and hearings on October 15, 16 and 17, 1985.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final hearing on October 17, 1985.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Room 1018, HOLC Building, Department of Justice, 320 First Street, NW., Washington, D.C. 20530, (202) 724–7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 85–21882 Filed 9–12–85; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

National Conference of Member Representatives from State Advisory Groups; Meeting

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule for the forthcoming meeting of the National Conference of Member Representatives from State Advisory Groups. Notice of the meeting is required by the Federal Advisory Committee Act.

DATE: Sunday, September 29, 4:00–7:00 p.m.; Tuesday, October 1, 4:15–7:00 p.m.; Wednesday, October 2, 10:30–11:00 a.m.

ADDRESS: Pittsburgh Hilton, Gateway Center, Pittsburgh, Pennsylvania.

SUPPLEMENTARY INFORMATION: The National Conference of Member Representatives from State Advisory Groups (Conference) will meet during the "1985 National Conference of State Juvenile Justice Advisory Groups" held from September 29, 1985 to October 2, 1985 at the Pittsburgh Hilton, Gateway Center, Pittsburgh, Pennsylvania.

The 1985 National Conference is sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Coalition of State Juvenile Justice Advisory Groups. The National Conference will provide attendees with an opportunity to hear expert speakers in the field of juvenile justice, attend panel sessions on contemporary issues in juvenile justice, and examine critical issues through in-depth workshops in such areas as: jail removal and detention; missing children; status offenders and runaways; minorities in the juvenile justice system; and delinquency prevention. Additional sessions and workshops will also be held.

In the course of the National Conference, the National Conference of Member Representatives from State Advisory Groups, an advisory committee established pursuant to 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 241(f)(3) and (4) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. These sessions, which will be open to the public, are scheduled at the above listed dates times.

FURTHER INFORMATION: For further information regarding the 1985 National Conference, please contact Marion Mattingly, Conference Coordinator, at (202) 547–6340. For information specific to the advisory committee function of the Conference, please contact Sharon Wagner, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C. 20531 (202/724–7751).

Dated: September 10, 1985.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85–22022 Filed 9–12–85; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–13,054]

Amstar Corp., Spreckels Sugar Division, Factory No. 1, Spreckels, CA; Further Determination on Remand

Pursuant to the U.S. Court of International Trade remand in *Sugar Workers Union #180* v. *Donovan* (USCIT No. 83–3–00346) ordering that the Department conduct a survey of Amstar's Spreckels Sugar Division's customers in order to determine the extent to which sugar imports contributed importantly to worker separations at the Spreckels Sugar Division's Factory No. 1 at Spreckels, California, the Department makes the following further determination.

The Department moved that the Court remand the instant case to the Department so that the Department could accomplish a more comprehensive investigation. The initial investigation, published in the **Federal Register** on August 27, 1982 (47 FR 37979), did not include a customer survey or sales and production data.

On remand, the Department obtained production and sales data for the Spreckels plant and sales data for the Spreckels Sugar Division for 1980, 1981 and 1982 plus a listing of the top major accounts of the Spreckels Sugar Division. The data showed that the Spreckels plant had increased production and sales in 1981 compared to 1980 before closing in mid-1982. These findings show that the Spreckels workers did not meet the decreased production or sales criterion in 1981.

The Department's survey of Spreckels Sugar Division's customers showed that the respondents to the survey, as a group, had a greater purchase reduction from the Spreckels Sugar Division in 1982 than the Spreckels Sugar Division had a decline in sales for 1982. The survey also revealed that none of the respondents imported sugar in 1980, 1981 or 1982. Over half of the customers reporting were industrial customers and nearly all of these reported the use of HFCS in their products. Several of the industrial respondents reported that they switched from domestic sugar to HFCS during the survey period and others had implemented the shift to HFCS a year or so before the Department's initial investigation.

The Spreckels plant closed, according to company officials, because of the high cost of transporting sugar beets from the growers to the refinery. Also, fewer

sugar beet growers remained in the Salinas, California area as they began to shift their acreage from sugar beets to other more profitable cash crops.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance for former workers at Amstar Corporation, Spreckels Sugar Division's Factory No. 1 at Spreckels, California.

Signed at Washington, D.C., this 5th day of September 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 21997 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-87-C]

A.A. & W. Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

A.A. & W. Coals, Inc., Box 392, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 15 Mine (I.D. No. 15-15185) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A sumary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 15 Mine is in the No. 2 Elkhorn Seam ranging from 44 to 50 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy will restrict the operator's seating position and limit the operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21988 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-17-M]

American Gilsonite Co.; Petition for Modification of Application of Mandatory Safety Standard

American Gilsonite Company, 1150 Kennecott Building, Salt Lake City, Utah 84133 has filed a petition to modify the application of 30 CFR 57.19056 (automatic hoist) to its E-29 Shaft of its No. 30 Mine (I.D. No. 42-01781) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that when automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

2. The No. E-30 mine is approximately 1000 feet west of the E-29 mine. There are four passageways between the two shafts at various levels and there is an underground mine phone in the E-29 mine which is connected to the E-30 hoist house system.

3. The hoist has been equipped with extra safety devices in addition to those incorporated in its design, and operates under limited and controlled conditions. Extra communications equipment for the underground miners has been provided to arrange for prompt assistance from underground personnel in the event of a hoist malfunction or emergency.

4. As an alternate method of compliance, petitioner proposes that in the event of an emergency or hoist failure, the miners can exit the conveyance at any point in the shaft and either call for assistance, climb the manway to the surface, or walk along one of the four passageways between the E-29 mine and the E-30 mine and gain access to the conveyance there for hoisting to the surface.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21989 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-94-C]

J.J.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

J.J.G. Coal Company, 523 East Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Whites Vein Slope (I.D. No. 36-06815) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

2. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

3. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

4. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face by 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to

maintain a safe and healthful mine atmoshpere.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21990 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-93-C]

Little Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Little Mining, Inc., P.O. Box 600, Wheelwright, Kentucky 41619 has filed a petition to modify the application of 30 CFR 75.1101 (deluge-type water sprays, foam generators; main and secondary belt conveyor drives) to its No. 1 Mine (I.D. No. 15-14724) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that deluge-type water sprays be installed at main and secondary belt conveyor drives.

2. As an alternate method, petitioner states that a flame-resistant belt conveyor with a switch to prevent slippage is used. The entire belt is damp to wet and there is a fire sensor system installed for the belt conveyor. A miner is assigned to watch and service the belt drive and two-way communication exists.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21991 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-92-C]

Marion Fuels, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Marion Fuels, Inc., P.O. Box 154, Wyatt, West Virginia 26463 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 46-05503) located in Harrison County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use spring-loaded metal locking devices, each consisting of a fabricated metal bracket and a metal locking device, in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking device will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking device will be securely attached to the brackets to prevent accidental loss of the locking device.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators and maintenance personnel of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21992 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-102-C]

McDaniel Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

McDaniel Mining Company, Inc., Drawer C, Cool Ridge, West Virginia 25825 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 3 Mine (I.D. No. 46-01297) located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Accumulation of water in the travelway to the separation stoppings between Mine Nos. 2 and 3 makes it impossible to make preshift examinations in that area. Petitioner states that no methane is being liberated in the affected area.

3. As an alternate method, petitioner proposes to establish a check point station at the affected area where methane and air quantity readings will be made by a certified person. Access to and from the check point station will be kept in a travellable and safe condition. A date board will be located at the station for the certified person to record the results of all readings taken, and a

record will be kept in a book at the main office.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21993 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-110-C]

Nemacolin Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Nemacolin Mines Corporation, 1600 West Carson Street, Pittsburgh, Pennsylvania 15263 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Nemacolin Mine (I.D. No. 36-00904) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mines Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all active workings be ventilated by a current of air containing not more than 0.5 volume per centum of carbon dioxide and not less than 19.5 volume per centum of oxygen.

2. As an alternate method, petitioner proposes to modify the air quality requirements of 18.5 volume per centum of oxygen and 2.5 volume per centum of carbon dioxide in the Number 2 Fan-North Split.

3. In support of this request, petitioner states that:

a. The air in the Number 2 Fan-North Split comes from a gob area and is not used to ventilate a working section;

b. The only personnel going to the area are Certified Mining Examiners, an Assistant Mine Foreman or the Mine Foreman; and

c. Personnel making the weekly examination carry a flame safety lamp, a methane detector, and a visual audible oxygen indicator which has an audible alarm for low oxygen.

4. At present, the No. 2 Fan is a return air fan only; there is no intake air. This fan acts as a return air fan/bleeder fan for more than 2300 acres of mined-out workings. The highest percentage of methane that has been detected is 0.3%

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21994 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-95-C]

Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Plateau Mining Company, P.O. Drawer PMC, Plateau, Utah 84501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Star Point No. 2 Mine (I.D. No. 42-00171) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return air course in its entirety.

2. Petitioner seeks a modification of the standard as it applies to longwall operations in the mine's 7th Left Tailgate Entry. Petitioner states that application of the standard would result in a diminution of safety for those miners required to travel the entry. Despite the installation of extensive roof support in the tailgate entry, the area is unsafe to travel due to deteriorating roof conditions.

3. As an alternate method, petitioner proposes that:

(a) The primary (intake) and secondary (beltline) escapeways will be maintained in travelable condition at all times;

(b) The longwall tailgate entry will be examined at the longwall face and ventilation will be evaluated for hazardous conditions on each preshift examination. The tailgate entry will be examined at the junction with the main returns, and ventilation will be evaluated for hazardous conditions on each preshift examination. Measurements for air volume, methane content, oxygen deficiency, and carbon monoxide levels will be taken with approved devices. Any hazardous conditions found will be corrected before production is begun;

(c) A date board or book will be maintained at each evaluation point with the date, time and initials of the person making the evaluation. The results of each evaluation will be recorded in a book kept at each station and on the surface;

(d) A rock dusting unit has been installed on the last tailgate shield. This duster will be run continually during coal mining to prevent accumulations of float coal dust in the tailgate entry;

(e) Persons will not be allowed to enter the tailgate entry while the longwall is in operation;

(f) Six self-contained self-rescuers will be stored at the longwall tailgate and six will be stored at the midpoint of the longwall face; and

(g) This plan will remain in effect for the duration of the longwall panel using the 7th Left tailgate entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21995 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-75-C]

Youghiogheny and Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Youghiogheny and Ohio Coal Company, P.O. Box 1000, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.326 (air courses and belt haulage entries) to its Nelms No. 2 Mine (I.D. No. 33-00968) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return air courses be separated from belt haulage entries.

2. Petitioner states that high horizontal roof pressures have resulted in additional roof support systems being installed in the entries, such as cribs, cross bars, roof trusses, and additional posts. These additional roof supports increased the resistance to air flow, thereby limiting the air volume which can be coursed through the air entries.

3. As an alternate method, petitioner proposes to use air in the belt haulage entries to assist in ventilating the active working places, in lieu of venting air into the return air course. Due to the large quantity and unpredictability of the flow rate of methane, an increased amount of air by using the belt haulage entry for intake air would improve ventilation of the working places. An approved Carbon Monoxide (CO) Belt Fire Detection System will also be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 85-21996 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-60]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Application Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

DATE AND TIME: September 23, 1985, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 268, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to discuss the further development of a constitutency for microgravity research. The meeting must be held at this time in order to formulate a report for the NASA Associate Administrator for Space Science and Applications which is to be presented at the meeting of the NAC Space Applications Advisory Committee on October 1-2, 1985. The Subcommittee is chaired by Dr. Robert F. Sekerka and is composed of 7 members. The meeting will be closed to the public. During this meeting the Committee will discuss and evaluate candidates being considered for membership. Throughout this meeting, the qualifications of candidates will be candidly discussed and appraised. Since the meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that it should be closed to the public.

Type of meeting: Closed.

Dated: September 9, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-21896 Filed 9-12-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel, Choreographers Fellowship Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers Fellowships Section) to the National Council on the Arts will be held on Monday, September 30, 1985 from 9:00 am-8:00 pm, Tuesday, October 1, 1985 from 9:00 am-6:30 pm, Wednesday, October 2, 1985 from 9:00 am-9:00 pm and Thursday and Friday, October 3-4, 1985 from 9:00 am-6:00 pm in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on Friday, October 4, 1985 from 4:00-6:00 pm to discuss policy issues.

The remaining sessions of this meeting on September 30, 1985 from 9:00 am-8:00 pm, October 1, 1985 from 9:00 am-6:30 pm, October 2, 1985 from 9:00 am-9:00 pm, October 3, 1985 from 9:00 am-6:00 pm and October 4, 1985 from 9:00 am-4:00 pm are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 6, 1985.

John H. Clark,

Director, Office of Council and Panel Operations.

[FR Doc. 85-21966 Filed 9-12-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket 40-8027]

Finding of No Significant Impact; Renewal of Source Material License No. Sub-1010; Sequoyah Fuels Corp., (UF_6 Conversion), Gore, OK

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Material License No. SUB-1010 for the continued operation of the Sequoyah Fuels Corporation's (SFC) UF_6 conversion facility at Gore, Oklahoma.

Environmental Assessment

Identification of the Proposed Action: The proposed action would allow SFC to continue operation for another 5 years essentially as it has been operated for the past years. The SFC plant produces high-purity UF_6 using uranium concentrates (yellowcake) as the starting material. The manufacturing process being used includes wet chemical purification to convert yellowcake to pure uranium trioxide followed by dry chemical reduction, hydrofluorination, and fluorination techniques to produce UF_6.

The Need for the Proposed Action: The SFC UF_6 conversion plant is one of only two such facilities in the United States. (The other is at Metropolis, Illinois.) The UF_6 production is one phase of the overall fuel cycle leading to production of fuel elements for nuclear reactors. Currently, the Sequoyah facility supplies UF_6 conversion services for the commercial nuclear power industry.

As long as the current demand for uranium fuel continues, the UF_6 production rate at either of the existing facilities is not expected to decrease. Denial of license renewal for the UF_6 conversion activity at the Gore site would require that similar activities expend at the only other existing UF_6 facility or at a new site. Although denial of renewal of the source material license for this plant is an alternative available to the NRC, it would be considered only if significant issues of public health and safety could be resolved to the satisfaction of the regultory authorities involved.

Environmental Impact of the Proposed Action: The SFC facility at Gore, Oklahoma, has been in operation since 1970. The overall production and impact of this facility from past operations were appraised by NRC in February 1975 and October 1977 in the following references: (1) U.S. Nuclear Regulatory Commission, Final Environmental Statement related to the Sequoyah Uranium Hexafluoride Plant, Keer-McKee Nuclear Corporation, Docket No. 40-8027, NUREG-75/007, February 1975; and (2) U.S. Nuclear Regulatory Commission, Environmental Impact Appraisal by the Divisions of Fuel Cycle and Material Safety, October 1977. No significant modifications of the production procedures have been made since the previous environmental assessment. For the current license renwal action, the NRC staff has determined that the scope of the environmental assessment should include: (1) Review the operation of the facility during the recent license period by comparing plant operation, effluent releases, and environmemtal monitoring data with license requirements or premissible levels of environmental contamination; (2) assess the impact on the environment from continued operation of the plant in its current configuration; and (3) discuss the alternatives to the proposed action as required by Section 102(2)(E) of NEPA. The Environmental Assessment (NUREG-1157) applies only to the renewal of the current license. The radiological impacts of the SFC facility were assessed by calculating the maximum dose to the individual living at the nearest residence and to the local population living within an 80-km (50 mile) radius of the plant site. Based on the past monitoring data, the NRC staff had calculated the 50-year dose commitments to the maximally-exposed individual living at the nearest residence (703 m NNE of the plant site); the committed doses are: whole-body—0.9 mrem; bone—6 mrem; and lung—15 mrem. The doses are in compliance with the 25 mrem limits set by the U.S. Environmental Protection Agency for the uranium fuel cycle facilities (40 CFR Part 190). The collective whole-body dose to the population within an 80-km (50 mile) radius of the plant is 2.4 man-rem which is only about 0.005 percent of the population dose of $4.6 \sqrt{} 10^4$ man-rem resulting from the natural background radiation dose in the area. For nonradiological air effluents, the plant complies with the permit requirements issued by the State of Oklahoma. For nonradiological liquid effluents discharged to surface water, SFC is subject to the Natonal Pollutant Discharge Elimination System (NPDES) permit issued by the EPA. Compliance history for past years indicated that SFC is geneally in compliance with the NPDES permit except for a few occasional short-term violations. Therefore, the staff concludes that there will be no signficant impacts associated with the proposed action.

Agencies and Persons Consulted: The NRC staff met with representatives of the Oklahoma Water Resources Board on May 3, 1983, and the staff also contacted the Oklahoma State Department of Health, Air Quality Service.

Finding of No Significant Impact: The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the foregoing Environmental Assessment (NUREG-1157), we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Environmental Assessment (NUREG-1157) for the proposed action, on which this Finding of No Significant Impact is based, relied on the following environmental documents: (1) Kerr-McGee Nuclear Corporation, Sequoyah Facility License Renewal Application, License SUB-1010, Docket No. 40-8027, September 1, 1982; (2) Kerr-McGee Nuclear Corporation, Response to U.S. Nuclear Regulatory Commission's Site Visit Information Request, July 11, 12, and 20, and August 19, 1983; (3) Sequoyah Fuels Corporation, Sequoyah Facility License Renewal Application (Revised), License SUB-1010, Docket No. 40-8027, October 1983; and (4) Supplemental Environmental Information from Sequoyah Fuels Corporation in letter dated March 15, 1985.

The Environmental Assessment (NUREG-1157) and the above documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Local Public Document Room at the Sallisaw City Library, 111 North Elm, Sallisaw, Oklahoma. Copies of NUREG-1157 may also be purchased by calling (301) 492-9530 or by writing to the Public Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, Maryland this 5th day of September, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-21881 Filed 9-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461A]

Illinois Power Co. et al.; Updated Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Clinton Power Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Clinton 1 and 2 construction permits to the Illinois Power Company, the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in central and southern Illinois, the events relevant to the Clinton construction permit review and the events that have occurred subsequent to the construction permit review and the initial no significant change analyses.

The conclusion of the staff's analysis is as follows:

Staff completed its initial antitrust operating license review of the Clinton Nuclear Power Station (Clinton) in February of 1982. Several changes in the applicants' activities since the original construction permit (CP) review in 1974 were identified; however, staff concluded that,

"Based upon the successful implementation of CP license conditions and the lack of any detrimental conduct or activity (to the competitive process in central and southern Illinois) on the part of Illinois Power Company, Soyland Power Cooperative or Western Illinois Power Cooperative, staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station." (Clinton "Finding of No Significant Antitrust Changes," March 11, 1982, **Federal Register**, p. 10655.)

Since the staff completed its initial antitrust operating license review in February of 1982, there have been construction delays necessitating changes in scheduled fuel load dates for the Clinton plant. Fuel loading is now scheduled for January of 1986, approximately four years after the staff completed its initial antitrust review. Staff felt this four year period created a "review vacuum" and requested updated information from the applicants pursuant to any changed activity since the initial antitrust operating license review.

After reviewing the updated Regulatory Guide 9.3 information and contacting various electric utility representatives in Illinois and other interested parties, staff identified several changes in the applicants' activities (principally those of Illinois Power Company) since the initial operating license review. Many of the changes, e.g., new interconnections and partial requirements wholesale power sales, by Illinois Power Company, represented extensions of those changes identified in the original operating license review and have provided additional procompetitive stimuli to the Illinois bulk power industry. Smaller power systems in Illinois have been able to successfully "shop" for alternative sources of power and energy. Applicants Illinois Power Company, Soyland Power Cooperative, Inc. and Western Illinois Electric Power Cooperative, Inc. have initiated a study to determine whether or not future jointly owned generating facilities would be economically feasible. New transmission agreements have been consummated between Illinois Power and its wholesale power customers that provide these smaller power systems with the means to take advantage of the benefits normally associated with larger, fully integrated power systems, e.g., access to short term economy and diversity power and energy sales and access to transmission for long term block purchases of power and energy from a number of different power suppliers. Increased coordination between those fully integrated power systems and the smaller, less diversified power systems has led to greater competition in the Illinois bulk power industry. This trend toward greater coordination among industry participants began with the institution of antitrust license conditions at the construction permit review stage.

The changes that have been identified since the construction permit review have by and large provided momentum for greater coordination, and consequently increased competition between all groups of power supply systems in central and southern Illinois. Staff observed this trend toward increased competition among bulk power suppliers in its initial antitrust operating license analysis. This trend has continued since 1982 and consequently staff sees no reason to change its recommendation that "no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Clinton Power Station, Unit 1 is not required.

Signed on September 4, 1985. Nuclear Reactor Regulation.

Harold R. Denton,

Director of Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the **Federal Register** notice. Requests for a reevaluation of the updated no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21972 Filed 9-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29, issued to Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

The GGNS Unit 1 is a boiling water reactor with a Mark III containment. The spent fuel pool is located in the auxiliary building, similar to spent fuel pool arrangements for pressurized water reactors. Above the GGNS reactor, and within the containment, there is an upper containment pool with racks for holding new fuel to be placed in the reactor and spent fuel removed from the reactor during refueling; however, before reactor startup after refueling, all spent fuel is transferred to the spent fuel pool for storage.

The amendment would revise section 5.6 "Fuel Storage" of the Technical Specifications to allow increased upper containment pool capacity and increased spent fuel storage capacity. This increased capacity would be obtained by replacing the fuel racks in the upper containment pool in the spent fuel storage pool with high density fuel racks. This reracking would increase the upper containment pool capacity from 170 to 800 fuel assemblies in order to hold a complete core unloading, if necessary, and increase the spent fuel pool storage capacity from 1270 to 4348 fuel assemblies. These changes were requested in the licensees' application for amendment dated May 6, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated: or (3) involve a significant reduction in a margin of safety. Our evaluation of the reracking of the spent fuel pool and of the upper containment pool are considered separately.

A. Spent Fuel Pool

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards considerations is centered on three standards: (1) Does increasing the spent fuel pool storage capacity significantly increase the probability or consequences of accidents previously evaluated? Reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed; (2) does increasing the spent fuel pool storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? With respect to Grand Gulf Nuclear Station (GGNS) Unit 1, the staff has not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. The proposed reracking does not create the possibility of a new or different kind of accident previously evaluated for the spent fuel pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the evaluations cited in the Safety Evaluation Report (SERs) supporting each amendment: and (3) does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? The staff has not identified significant reductions in safety margins due to increasing the storage capacity of the spent fuel pool. The expansion results in an increased heat load, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (K_{eff}). However, after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The licensee has indicated that the (K_{eff}) would not exceed 0.95. The techniques utilized to calculate (K_{eff}) have been bench-marked againsts experimental data and are considered very reliable. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies.

In summary, replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies is considered not likely to involve significant hazards consideration if two conditions are met. First, no new technology or unproven technology may be utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the (K_{eff}) of the pool must be maintained less than or equal to 0.95. Reracking to allow closer spacing satisfies these conditions.

The licensee's submittal included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Pertinent portions of the licensee's discussion, addressing each of the three standards, is provided herein.

The licensee has stated that its analysis of the proposed reracking was accomplished using currently acceptable codes and standards and conforms to staff guidance of April 1978. The results of the licensee's analysis in relation to the three standards is as follows:

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis the licensee identified the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.

The probability of any of the four accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these accidents. The installation of the high density racks will be completed prior to the storage of any spent fuel in the present racks; thus, a construction accident involving spent fuel is not possible. Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The consequences of: (1) A spent fuel assembly drop in the spent fuel pool are discussed in the licensee's submittal. For this accident condition, the criticality acceptance criterion is not violated. The radiological consequences of a fuel assembly drop are not changed from the previous analysis. The results of the staff's evaluation were transmitted to the licensee in September 1981. The licensee's analysis of the reracked design indicates a dropped fuel assembly would not penetrate through the base plate or distort the racks so they would not perform their safety function. Thus, the consequences of this type accident will not be significantly increased from previously evaluated spent fuel assembly drops, and have been found acceptable by the NRC.

The consequences of (2) loss of spent fuel pool cooling system flow have been evaluated for the existing spent fuel pool cooling system design as described in the GGNS FSAR. There are two spent fuel pool cooling system pump and heat exchanger trains. One train will be operating and the other train will be maintained in an operable condition per Technical Specifications in the event of a failure in the cooling system. The service water system that transports heat from the spent fuel pool cooling system to the ultimate heat sink is being

upgraded in accordance with License Condition 2.C.(20). If additional cooling capacity is required for the storage of a larger number of elements, such additional capacity will be provided or the license will be appropriately conditioned. The structural integrity of the spent fuel pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of this type accident will not be significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of (3) a seismic event have been evaluated. The new racks will be designed and fabricated to satisfy the NRC staff accepted design criteria. The racks are designed to Seismic Category I criteria. The racks are neither anchored to the pool floor nor are they attached to the pool side walls. The racks are structurally adequate to resist normal and accident load combinations. The racks are designed so that the floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the auxiliary building. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of a seismic event will not be signficantly increased from previously evaluated events.

The consequences of (4) a spent fuel cask drop accident are unchanged by the requested modification. The spent fuel cask handling crane rails do not extend over the spent fuel pool and the crane is designed to be single failure proof in accordance with the requirements of NUREG–0554 to preclude a drop on safety related equipment. In addition, the crane meets the guidelines of NUREG–0612. Accordingly, the consequences of a cask drop accident are not significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to rerack the spent fuel pool will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Create the possibility of new or different kind of accident from any accident previously evaluated.

The proposed reracking was evaluated by the license in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," NRC Regulatory Guides, NRC Standard Review Plans, and Industry Codes and Standards as listed in the licensee's submittal. In addition, several previous NRC SERs for rerack applications similar to this proposal have been reviewed. Neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. As a result of this evaluation and these reviews, it is concluded that the proposed reracking does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the GGNS spent fuel storage racks.

Third Standard

Involve a significant reduction in a margin of safety.

The NRC staff safety evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, will need to address the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

The established acceptance criteria for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design as discussed in the licensee's submittal. The methods to be used in the criticality analysis conform with the applicable portions of the codes, standards, and specifications listed in the submittal. In meeting the acceptance criteria for criticality in the spent fuel pool, such that K_{eff} is always less than 0.95, including uncertainties of 95/95 probability confidence level, the proposed amendment to rerack the spent fuel pool will not involve a significant reduction in the margin of safety for nuclear criticality.

The licensee has stated in its analysis of the reracked pool that conservative methods were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The calculated maximum fuel cladding temperature of 166°F is substantially less than the temperature at which local boiling would be initiated and sustained (243°F). The calculated maximum water temperature of 140°F for a normal refueling operation and 148°F for an abnormal unloading of the complete core are slightly higher than temperatures calculated for the present fuel racks; however, the temperatures for the new racks still meet the NRC staff's acceptance criteria of 140°F for normal refueling and 150°F for an abnormal unlaoding. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concern.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loadings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural considerations of the proposed rerack are described in the licensee's submittal. The proposed racks are to be designed in accordance with applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978, as modified January 18, 1979; and Standard Review Plan 3.8.4. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and sliding, including impact on each other or the pool walls, damage of spent fuel assemblies, and criticality concerns. As previously stated, neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. Thus, the margins of safety are not significantly reduced by the proposed rerack.

B. Upper Containment Pool

The technical evaluation of whether or not the reracking of the upper containment pool involves significant hazards considerations is also based on the three standards in 10 CFR 50.92.

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

For the upper containment pool, the licensee identified the following potential accidents:

1. A spent fuel assembly drop in the pool.
2. Loss of pool cooling system flow.
3. A seismic event.
4. Drop of a heavy load.

The probability of any of these accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these

accidents. The installation of the high density racks will be completed prior to unloading any fuel from the reactor; thus a construction accident involving spent fuel is not possible. Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The considerations of the structural damage of: (1) A spent fuel assembly drop in the upper containment pool are the same as the considerations for a drop in the spent fuel pool because the same design is used for the pool liner and the cells in the racks in both pools. The offsite radiological consequences of a fuel assembly drop inside primary containment are much less than for a drop of a fuel assmbly in the spent fuel pool, which is inside secondary containment. Staff's evaluation of radiological consequences provided in the SER, September 1981, is not changed by the reracking. Accordingly, the consequences of this type accident will not be significantly increased by the reracking.

The consequences of loss of upper containment pool cooling system flow have been evaluated. The cooling of spent fuel in the upper containment pool is accomplished by the spent fuel pool cooling system, supplemented by one train of the residual heat removal RHR system. Both the spent fuel pool cooling system and the RHR system have redundant pumps and heat enchangers, so that the inoperability of one component in the systems would be compensated by use of a redundant component. Reracking does not affect this capability. The structural integrity of the upper containment pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, consequences of (2) loss of cooling flow will not be significantly increased from previously evaluated accidents of this type.

The consideration of the consequences of (3) a seismic event is the same as the consideration for the spent fuel pool because the rack design is the same. The upper containment pool rack modules are lighter than modules in the spent fuel pool (121 cells versus 304 cells). Therefore, the shear stress in the upper containment pool liner for a seismic event is bounded by the analysis for the spent fuel pool liner. The pool floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the floor. The portion of the upper containment pool which is used to store spent fuel during refueling is designed similar to the spent fuel pool to preclude drainage below a safe shielding level to assure no accidental loss of pool water. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of a seismic event will not be significantly increased from previously evaluated events.

The consequences of (4) drop of a heavy load on spent fuel in the upper containment pool were considered by the licensee. The containment polar crane and critical components of the fuel handling system are designed to seismic category I requirements so that they will not fail in a manner which results in unacceptable fuel damage or damage to safety-related equipment. Heavy load handling equipment inside containment meets the guidelines of NUREG–0612 "Control of Heavy Load at Nuclear Power Plants." The licensee has analyzed the consequences of a dropped fuel transfer canal gate on the fuel racks inside containment. The analysis showed that there would be no gross buckling of fuel cells in the racks and consequently the geometry of the active fuel in a fuel assembly would be preserved. Accordingly, the consequences of dropped heavy load are not significantly increased from previously evaluated accident analysis.

Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reracking in the upper containment pool was evaluated by the licensee in accordance with the guidance of the NRC position paper "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," NRC Regulatory Guides, NRC Standard Review Plans, and Industry Codes and Standards as listed in licensee's submittal. In addition, the staff has made a preliminary review of the proposal. Neither the licensee nor the staff could identify a credible mechanism for breaching the structural integrity of the upper containment fuel pool which could result in a loss of cooling water such that cooling flow could not be maintained. Accordingly, it is concluded that the proposed reracking does not create the possibility of a new or different kind of accident from any accident previously evaluated for the upper containment fuel pool racks.

Third Standard

Involve a significant reduction in a margin of safety.

The consideration of the margin of safety of the proposed reracking modification for the upper containment pool addressed the same three areas that were found necessary to be addressed in reracking of the spent fuel pool:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

As in the spent fuel pool, the neutron multiplication factor will be less than or equal to 0.95 including all uncertainties under all conditions. Methods used to calculate criticality are the same as those used for the spent fuel pool. Accordingly, the proposed reracking of the upper containment fuel pool will not involve a significant reduction in the margin of safety for nuclear criticality.

The licensee's analysis of maximum fuel and maximum pool temperature considered the interconnection of the spent fuel pool and the upper containment pool during refueling and the use of the spent fuel pool cooling system supplemented by the RHR system. The results of that analysis, which are described above for the spent fuel pool rerack considerations, show that NRC staff's acceptance criteria would be met. Accordingly, there is no significant reduction in the margin of safety for thermal hydraulic or upper containment fuel pool cooling concerns.

The mechanical, material and structural considerations of the proposed rerack in the upper containment pool are the same as those described above for the spent fuel pool. Accordingly, the margins of safety for these considerations in the upper containment pool are not significantly reduced by the proposed rerack.

C. Summary

The licensee's request to expand GGNS spent fuel storage pool and upper containment pool capacities satisfies the following conditions: (1) The storage capacity expansion method consists of modifying a portion of the existing racks with a design which allows closer spacing between stored spent fuel assemblies; (2) the storage capacity expansion method does not involve rod consolidation or double tiering; (3) the K_{eff} of the pools are maintained less than or equal to 0.95; and (4) no new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion. Consequently, the request does not involve significant hazards consideration in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any

accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Accordingly the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. § 10154. Under Section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy," preceded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of Section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR part 2 procedures apply.

At this time, the Commission does not have effective regulations implementing Section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54,499 (December 5, 1983).

Subject to the above requirements, and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding, have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequenlty.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 10th day of September 1985.

For the Nuclear Regulatory Commission.

Carl R. Stahle,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85-21973 Filed 9-12-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14205]

Application and Opportunity for Hearing; Chrysler Financial Corporation

September 6, 1985.

Notice is hereby given that Chrysler Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Bankers Trust Company ("Bankers") under an indenture dated as of August 1, 1984 and Supplemental Indenture thereto (the "1984 Indenture") between the Company and Bankers which was heretofore qualified under the Act, and the trusteeship by Bankers under the indentures dated as of July 1, 1985, August 15, 1985 and August 28, 1985 (the "New Indentures") between Bankers, as trustee, and the Company, as issuer, which are not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as Trustee under the 1984 Indenture or under the New Indentures.

Section 310(b) fo the Act, which is included in section 608 of the 1984 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section of the Act provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in section 608 of the 1984 Indenture), seeks to exclude the New Indenture from the operation of section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the New Indentures may be excluded from the operation of section 310(b)(1) of the Act (as set forth in section 608 of the 1984 Indenture) if the Company shall have sustained the burden of proving by this application to the Commission that the trusteeships of Bankers under the 1984 Indenture and under the New Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under one of these Indentures.

The Company alleges that:

(1) As of August 19, 1985, the Company had outstanding $200,000,000 of its Subordinated Exchangeable Variable Rate Notes due 1994 (the "1994 Notes") and $100,000,000 of its 12⅛% Subordinated Notes Due February 15, 1990 (the "1990 Notes") under the 1984 Indenture. The 1994 Notes and the 1990 Notes were registered under the Securities Act and the 1984 Indenture was qualified under the Act.

(2) On July 4, 1985 the Company issued, and there are presently outstanding, Australian $55,000,000 aggregate principal amount of its 13⅝% Subordinated Bonds, Due 1992 (the "1992 Bonds") under the Indenture dated as of July 1, 1985. In addition, the Company proposes to issue ECU 75,000,000 aggregate principal amount of its 9% Subordinated Bonds Due 1992 and New Zealand $65,000,000 aggregate principal amount of its 17% Subordinated Notes Due August 1990 on or about August 22, 1985 and August 29, 1985, respectively, under the Indentures dated as of August 15, 1985 and August 28, 1985 respectively. The securities issued and to be issued under the New Indentures are hereinafter collectively called the "Bonds". The Bonds are unsecured obligations of the Company and will be subordinate and junior in right of payment to the Company's obligations to holders of senior debt.

(3) In accordance with the Commission's longstanding position that the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act") are primarily intended to protect American investors, the issuance of the Bonds under the New Indenture outside the United States of America does not require registration of the Bonds under the Securities Act or qualification of the New Indenture under the Act.

(4) The Company's obligations under the 1984 Indenture and the New Indentures are wholy unsecured and all such obligations rank *pari passu inter se.*

(5) The Company is not in default under the 1984 Indenture, the 1994 Notes or the 1990 Notes and the Company is not in default under the New Indentures or the Bonds.

(6) Such differences as exist between the 1984 Indenture and the New Indenture are not so likely to invlove a material conflict of interst as to make it necessary in the public interest or for the protection of any of the investors to disqualify Bankers from acting as Trustee under one of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14205, which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after September 26, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, not later than September 25, 1985 at 5:30 p.m., Eastern Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or request a hearing thereon. Any such

communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21934 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22391; File No. SR-Amex-85-32]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to an Airline Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1985 the American Stock Exchange, 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 American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to revise its Transportation Index ("XTI"), which is comprised of stocks engaged in the airline, railroad and trucking industries, to an index comprised exclusively of airline company stocks ("Airline Index"). To effectuate this change, the Exchange proposes to amend Rule 901C to reduce, from eight to five, the minimum number of stocks required to be included in an underlying index. In addition, Amex proposes to amend Rule 904C to establish positions and exercise limits on the Airline Index of 8,000 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's of Statement the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1984, the Exchange began options trading on the Transportation Index (XTI), a price-weighted index which reflects the stock prices of 20 corporations engaged primarily in the airline, railroad and trucking industries. The Exchange had developed the XTI to permit market participants to transfer the risks associated with stock ownership relating to the transportation industry as a whole. It was believed that a 20-stock index covering various segments of the industry would be an attractive trading vehicle.

Trading statistics show, however, that the index has failed to meet the Exchange's expectations. For example, the average daily volume in the seven-month period from January to July 1985 has been only 158 contracts, and in five of the seven months, average daily volume has been under ten contracts per month. Lack of interest in the index occurred, in part, because the stocks underlying the different sectors of the transportation industry do not move in relationship to one another. For example, it has not been uncommon for the airline stocks to move in one direction while stocks representing other sectors to move in another direction. As such, the index has neither attracted trading interest nor served as an effective tool for portfolio hedging.

The Exchange had experienced a similar situation with the stocks comprising its Oil and Gas Index (XOI). As introduced in September 1983, XOI included 30 companies engaged in the oil industry as well as in gas exploration, production and drilling activities. Trading volume in XOI was lower than expected, and investors and marketmakers has suggested that a narrowly-designed index bases on a smaller group of component stocks would be a preferable hedging vehicle. Accordingly, in October 1984 the Exchange revised the Oil and Gas Index by deleting all stocks other than the larger oil producing companies. As a result, options trading volume in the pure Oil Index has improved from that of the Oil and Gas Index.

Now, market participants have indicated that they would prefer to trade a narrowly-designed index based on one sector of the transportation industry comprised of a limited number of stocks. Thus, the Exchange proposes to revise the Transportation Index by deleting 15 of the 20 stocks to create a five-stock Airline Index comprised of the following stocks:

AMR Corporation (AMR)—holding company for American Airlines
Delta Airlines, Inc. (DAL)
Northwest Airlines, Inc. (NWA)
UAL, Inc., (UAL)—holding company for United Airlines
U.S. Air Group, Inc. (U)

The stocks which are proposed to be deleted from the XTI are:

Burlington Northern Inc. (BNI)
CNW Corporation (CNW)
CSX Corporation (CSX)
Canadian Pacific Limited (CP)
Carolina Freight Corporation (CAO)
Consolidated Freightways, Inc. (CNF)
Federal Express Corporation (FDX)
Norfolk Southern Corporation (NSC)
Overnite Transportation Co. (OVT)
RLC Corp. (RLC)
Santa Fe Southern Pacific Corporation (SFX)
Transway International Corporation (TNW)
TransWorld Airlines, Inc. (TWA)
Union Pacific Corporation (UNP)
Western Airlines, Inc. (WAL)

Like the Transportation Index, the Airline Index will be a price-weighted index, whereby the index value will be calculated by dividing the sum of the prices of the component stocks by a divisor. The divisor will remain constant except for adjustments necessary to avoid discontinuity to the index value due to stock splits, stock dividends, corporate reorganizations or other similar events. The day the index begins trading, the divisor will be two. As calculated on August 21, 1985, the index has a value of approximately 120.

All Exchange rules currently applicable to the trading of options on the Transportation Index will govern options trading on the Airline Index. However, to effectuate the revision of the Transportation Index to an Airline Index, Rule 901C must be amended to reduce, from eight to five, the minimum number of stocks required to be included in an underlying index. All of the five stocks in the proposed Airline Index are highly liquid and currently the subject of stock options trading. Further, no one stock dominates the proposed index. As of August 21, 1985, the percentage of the total index value represented by each stock is as follows: AMR–20.30%; DAL–20.35%; UAL–23.46%; NWA–21.86%; U–14.00%.

In addition, it is proposed that Rule 904C be amended to establish position and exercise limits on the Airline Index

of 8,000 contracts. This is the current limit applicable to all of the Exchange's other industry-based index options and two of the component stocks, AMR and UAL, currently have position and exercise limits of 8,000 contracts.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange in that options on an Airline Index would provide valuable hedging and trading opportunities for market participants. Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange's Stock Selection and New Products Committees have endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21935 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22390; File No. SR-Phlx-85-26]

Self-Regulatory Organization; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Additional Foreign Currency Expiration Months

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1985 the Philadelphia Stock Exchange, 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 Philadelphia Stock Exchange, Inc. ("PHLX") proposes, to introduce a new series of expiration cycles in foreign currency options. Under this proposal, the PHLX will have series of options trading in six expiration months: the four quarterly expiration months which PHLX currently is authorized to list and the nearest two expiration months which are not one of the quarterly cycle months.

The following chart illustrates the outstanding expiration months for each month in a year.

Italics indicates added series.

At expiration	Outstanding and new expirations.
December	*Jan.*, *Feb.*, March, June, Sept., *Dec.*
January	Feb., March, *April*, June, Sept., Dec.
February	March, April, *May*, June, Sept., Dec.
March	April, May, June, Sept., Dec. *March*
April	May, June, *July*, Sept., Dec., March
May	June, July, *August*, Sept., Dec., March
June	July, August, Sept., Dec., March, *June*
July	August, Sept., *Oct.*, Dec., March, June
August	Sept., Oct., *Nov.*, Dec., March, June
September	Oct., Nov., Dec., March, June, *Sept.*
October	Nov., Dec., *Jan.*, March, June, Sept.
November	Dec., Jan., *Feb.*, March, June, Sept.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Historically foreign currency options have been listed for trading in three month intervals. Recently, the PHLX has experienced interest in consecutive monthly cycles in index options. These cycles give investors increased flexibility in short term investment opportunities. Recently, the PHLX has received approval to initiate monthly cycles for equity options pursuant to a pilot program. The PHLX does not know whether there will be similar interest in additional foreign currency option cycles. However, in anticipation of such interest and in order to compete with the new foreign currency option program of the Chicago Board Options Exchange ("CBOE"), which includes monthly

expirations, the PHLX is proposing that it be given discretion to initiate trading as proposed in Item 1 above at any time following Commission approval of the instant proposal. At the time it decides to initiate additional cycles, the PHLX will so notify the Division of Market Regulation.

The proposed rule change is consistent with Section 6(b)(5) of the Securities and Exchange Act of 1934 ("Act") in that it is intended to facilitate transactions in securities and will provide the PHLX with greater flexibility to list a more complete range of foreign currency options series for investors.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

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 Effectivness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all wiritten 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 October 4, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21936 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2199]

Massachusetts; Declaration of Disaster Loan Area

Worcester County in the State of Massachusetts constitutes a disaster area because of heavy rain and flooding which occurred July 31 through August 1, 1985. Applications for loans for physical damage may be filed until the close of business on November 4, 1985, and for economic injury until the close of business on June 5, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219906 for physical damage and for economic injury the number is 632800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1985.

Robert A. Turnbull,

Associate Deputy Administrator for Management & Administration.

[FR Doc. 85-21888 Filed 9-12-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2201]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 4, 1985, I find that the Counties of Harrison and Jackson and the adjacent County of Hancock constitute a disaster loan area because of damage from Hurricane Elena and flooding beginning on or about September 2, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 4, 1985, and for economic injury until June 4, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., S.W., Suite 822 Atlanta, Georgia 30303

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220108 for physical damage and for economic injury the number is 633000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-21889 Filed 9-12-85; 8:45 am]

BILLING CODE 8025-01-M

Albuquerque Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Albuquerque, New Mexico, will hold a public meeting from 9:00 a.m. to 3:00 p.m. on Wednesday, September 25, 1985, at the Albuquerque Technical-Vocational Institute, Business Occupations Building, 717 University SE, Albuquerque, New Mexico 87108 to discuss such matters as may be presented by members, staff of the

Small Business Administration and others attending.

For further information, write or call Phil Ramos, District Director, U.S. Small Business Administration, 5000 Marble, NE., Suite 320, Albuquerque, New Mexico 87110 (505) 766–3430.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–21895 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

Baltimore Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III, located in the geographical area of Baltimore, Maryland, will hold a public meeting at 12:00 p.m. on Monday, September 23, 1985, at the Donaldson Brown Center, 200 Mt. Ararat Farm Road, Port Deposit, Maryland 21904 to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call J. Arnold Feldman, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, (301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–21894 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting from 10:00 a.m., on Tuesday, September 17, 1985, at the residence of Richard Gretsch, 44 Castle Hill Road, Newton, Connecticut, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John P. Burke, District Director, U.S. Small Business Administration, One Hartford Square West, Suite 201, Hartford, Connecticut 06106—(203) 722–2511.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 5, 1985.

[FR Doc. 85–21893 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–0490]

WFG-Harvest Partners Ltd.; Notice of Application for a License To Operate as Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102. (1985)), by WFG–Harvest Partners Ltd. (the Applicant), 767 Third Avenue, New York, New York 10017, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder. The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the SBA Regulations.

The general partners, limited partners and investment adviser of the Applicant are as follows:

Name and address	Relationship to applicant	Percent of ownership
Harvey J. Wertheim, 767 Third Avenue, New York, New York 10017.	General partner	.3846
Harvey Mallement, 767 Third Avenue, New York 10017.	General partner	.3846
Cloyd E. Marvin, 767 Third Avenue, New York, New York 10017.	General partner	.2308
WFG Deutsche Gesellschaft fur Wagniskapital mbH & Co., Kommanditgesellschaft von, 1964 (WFG-DGW), Ulmenstrasse 37-39, 6000 Frankfurt am Main 1, West Germany.	Sole limited partner	99.0000
Harvest Ventures, Inc., 767 Third Avenue, New York, New York 10017.	Investment adviser	

Messrs. Wertheim, Mallement and Marvin are managing directors of Harvest Ventures, Inc., the investment adviser.

WFG–DGW is a West German limited partnership (Kommanditgesellschaft) which is owned by five major West German banks as set forth below:

Name of bank	Percent of ownership
Dresdner Bank Aktiengesellschaft, Frankfurt/Main, West Germany	22
Deutsche Bank Aktiengesellschaft, Frankfurt/Main, West Germany	30
Commerzbank Aktiengesellschaft, Frankfurt/Main, West Germany	18
Westdeutsche Landesbank Girozentrale, Dusseldorf, West Germany	18
Bayerische Landesbank Girozentrale, Munchen, West Germany	12

The above named banks are the limited partners of WFG–DGW whose general partner is WFG Deutsshe Gesellschaft fur Wagniskapital mbH Konigstein, Ulmenstrasse 37–39, 6000 Frankfurt am Main 1, West Germany.

The Applicant will begin operations with a capitalization of $1.000,000 and will be a source of long term loan funds and equity capital for eligible U.S. small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 5, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–21892 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/887]

Chairman's Ad Hoc Group on Telecommunications Development of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The meeting of the Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT)

originally scheduled for September 12, 1985, as published in the **Federal Register** on September 9, 1985, has been rescheduled owing to extenuating circumstances regarding the change in the date for the October meeting in Geneva on the ITU Center for Telecommunications Development, and the unforeseen conflicts in meeting dates affecting key participants. The Chairman's Ad Hoc Group will now meet on October 2, 1985 at 10:30 A.M. in Room 1207, Department of State, 2201 C Street, N.W., Washington, D.C.

The purpose of this meeting is to discuss issues related to the proposed ITU Centre for Telecommunications Development. The Ad Hoc Group will make recommendations on possible U.S. positions regarding the Advisory Board of the Centre and a preparatory meeting of donor countries on the Advisory Board.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend should so advise Mr. Earl Barbely, Department of State; telephone (202) 632-5832. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

September 10, 1985.

[FR Doc. 85-21912 Filed 9-12-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended September 6, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 4, 1985	43379	Guyana Airways Corporation, V. Michael Straus, Suite 335, 1001 Connecticut Avenue, NW., Washington, D.C. 20036. Application of Guyana Airways Corporation pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for renewal of its current foreign air carrier permit, for a period of no less than five years. (Georgetown-Miami) Answers may be filed by October 2, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 21976 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-62-M

Agreements Filed Week Ending September 6, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Sept. 5, 1985	43382; R-1 thru R-4	Members of International Air Transport Association.	Change Argentinean currency from Peso to Paso to Austral, COMP MV/PC 0009, COMP MV/PC 0010, M.V. 949.	Oct. 1, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-21975 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-9-11]

Application of Midwestern Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause. Docket 42602.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Midwestern Airlines, Inc., continues to be fit to engage in interstate and overseas scheduled air transportation of persons, property and mail.

DATE: Persons wishing to file objections should do so no later than October 1, 1985.

ADDRESSES: Responses should be filed in Docket 42602 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW, Room 4107, Washington, DC 20590 and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, Department of Transportation, 400 7th Street, SW, Washington, DC 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-11 is available for inspection at our Documentary Services Division at the above address.

Dated: September 10, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21977 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Martin County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Martin County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32302, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an Environmental Impact Statement (EIS) for an additional interchange on I-95 in Martin County, Florida. The proposed interchange is of a partial cloverleaf design. It is to be located east of the Florida Turnpike and north of the St. Lucie Canal at a proposed county road near Mapps Creek.

Alternatives under consideration include: (1) Taking no action; and (2) construction of the proposed interchange.

Federal, State, and local agencies have contributed early coordination comments. Additionally, a project planning team developing this project will contact Federal, State and local agencies, as well as interested private organizations and citizens, for their input. Public information meetings will be held during the development of this EIS. In addition, a public hearing will be held during 1986. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A scoping meeting for this project is anticipated to be held early in the planning process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 5, 1985.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 85-21954 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

1977-85 Wayne School Buses; Public Hearing Rescheduled

The National Highway Traffic Safety Administration published a notice on August 13, 1985 (50 FR 32674) that it has issued an initial determination that school buses manufactured by Wayne Corporation failed to conform to Motor Vehicle Safety Standard No. 221 *School Bus Body Joint Strength*, and announced that a public proceeding on the matter was scheduled for September 4, 1985. On August 29, 1985, a notice appeared (50 FR 35174) rescheduling the proceeding for October 1, 1985.

The notice was in error. The correct date for the hearing is October 7, 1985, at 10:00 a.m. in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on September 30, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on September 9, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-21979 Filed 9-10-85; 4:38 pm]

BILLING CODE 4910-59-M

People's Car Company; Public Proceeding Rescheduled

The National Highway Traffic Safety Administration has rescheduled for October 9, 1985, a public proceeding originally scheduled for September 5, 1985, at which People's Car Co. will be afforded an opportunity to present data, views, and arguments relating to an intitial determination of noncompliance with several Federal motor vehicle safety standards. Notice of the initial determination of noncompliance and the original scheduling appeared in the **Federal Register** on August 13, 1985 (50 FR 32673).

The rescheduling of the proceeding responds to a petition for additional time in which to prepare for the proceeding, made by People's attorney in letters of August 30 and September 3, 1985. During the interim People's will investigate "the potential means by which People's may resolve the matter, including recall."

The agency believes the public interest will be best served by a brief postponement of the proceeding. Allowing People's additional time in which to investigate an appropriate means of remedeying the noncompliances will facilitate the ability of the company to resolve this matter in a manner consistent with the objectives of motor vehicle safety. Therefore in light of the foregoing, the public proceeding relating to the initial determination of noncompliance with several Federal motor vehicle safety standards will be held at 10:00 a.m. on October 9, 1985, in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on October 2, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 am to 4:15 pm) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on September 9, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-21980 Filed 9-10-85; 4:38 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3630-X	DOT-E 3630	Mallinckrodt, Inc., Paris, KY	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1).
3630-X	DOT-E 3630	Allied Chemical, Morristown, NJ	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1).
3630-X	DOT-E 3630	Ashland Services Company, Dublin, OH	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1).
4884-P	DOT-E 4884	Synthatron Corporation, Parsippany, NJ.	49 CFR 173.302(a)(1), 175.3, 176.61	To become a party to Exemption 4884 (modes 1, 2, 3, 4, 5).
5206-P	DOT-E 5206	D.C. Guelich Explosive Co., Clearfield, PA.	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1).
5206-P	DOT-E 5206	Nelson Brothers, Inc., Parish, AL	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1).
5206-P	DOT-E 5206	Explo-Midwest, Inc., Joplin, MO	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1).
5746-X	DOT-E 5746	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.145, 173.268, 175.3, 176.83(b).	To authorize shipment of contaminated missile components or defanking pumps containing a certain flammable liquid and a corrosive liquid packaged in wooden boxes or metal drums (modes 1, 2, 3, 4).
5923-X	DOT-E 5923	Union Carbide Corporation Danbury, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars (modes 1, 2, 3).
6122-X	DOT-E 6122	Pennwalt Corporation Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16.	Request for modifiction to authorize use of a different syle corrugated box, for shipment of polyethylene bags containing an organic peroxide (modes 1, 2).
6122-X	DOT-E 6122	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16.	To authorize use of DOT Specification 12B fiberboard box having higher gross weight than presently authorized and non-DOT specification fiberboard with handholes, for shipment of certain dry organic peroxides (modes 1, 2).
6418-P	DOT-E 6418	Brown & Bryant, Inc., Shafter, CA	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1).
6418-P	DOT-E 6418	PureGro Company, West Sacramento, CA.	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1).
6418-P	DOT-E 6418	Full Circle, Inc., DBA CENEX Soil Service Center, Connell, WA.	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1).
6452-X	DOT-E 6452	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154	To authorize shipment of certain organic peroxides in one pound bags, overpacked in a DOT Specification 12B65 fiberboard box (modes 1, 2).
6530-P	DOT-E 6530	Fitch Industrial & Welding Supply, Inc., Lawton, OK.	49 CFR 173.302(c)	To become a party to Exemption 6530 (modes 1, 2).
6658-X	DOT-E 6658	U.S. Department of Energy, Washington, DC.	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of certain Class A explosive (mode 1).
6658-X	DOT-E 6658	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of a certain Class A explosive (mode 1).
6712-X	DOT-E 6712	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC-3, 3A or 3AA cylinders (modes 1, 2, 3, 4, 5).
6762-P	DOT-E 6762	Anderson Chemical Company, Macon, GA.	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762 (modes 1, 2, 3, 4).
6786-X	DOT-E 6786	DuBois Chemical Company, Cincinnati, OH.	49 CFR 173.256	To authorize use of DOT Specification MC-311 and MC-312 cargo tanks, for shipment of a corrosive liquid (mode 1).
6800-X	DOT-E 6800	Ptasti-Drum Corporation, Lockport, IL	49 CFR 173.266	To authorize shipment of hydrogen peroxide not to exceed 70% (modes 1, 2, 3).
6874-P	DOT-E 6874	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 172.101, 173.370(a)(13)	To become a party to Exemption 6874 (modes 1, 2, 3).
6946-X	DOT-E 6946	Badger Welding Supplies, Inc., Madison, WI	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and ICC-3, 3A, or 3AA cylinders for shipment of certain compressed gases. Cylinders are over 35 years old (modes 1, 2, 3, 4, 5).
7007-X	DOT-E 7007	Allied Universal Corporation, Miami, FL	49 CFR 173.314(c), 179.2	To authorize shipment of chlorine in non-DOT specification multi-unit tank car tanks made in accordance with DOT Specification 110A500W (modes 1, 3).
7023-X	DOT-E 7023	Texas Instruments, Inc., Dallas, TX	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(i)(5), 173.272(g), 173.272(i)(24).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material (mode 1).
7051-X	DOT-E 7051	Ozark-Mahoning Company, Tulsa, OK	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box, for transportation of a corrosive liquid (modes 1, 4).
7269-X	DOT-E 7269	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a)	To authorize use of silt-proof paper or plastic bags overpacked in DOT Specification 21C fiber drums, for transportation of certain Class A explosives (mode 1).
7440-X	DOT-E 7440	Revlon Professional Products, Inc., Jacksonville, FL.	49 CFR 173.1200(a)(8)(i)(A), 173.1200(a)(8)(i)(E), 173.306(a)(3)(i), 173.306(a)(3)(v).	To authorize transport of a nonflammable gas, in non-DOT specification one-piece, impact-extrude, cylindrical, aluminum container (modes 1, 2, 3).
7458-X	DOT-E 7458	Ekohwerks Company, Eastlake, OH	49 CFR 173.304(a)(2), 178.42	To authorize manufacture, marking and sale of non-DOT specification seamless cylinders, for transportation of nonflammable gases (modes 1, 2, 3).
7462-X	DOT-E 7462	Monsanto Company, Saint Louis, MO	49 CFR 173.245b(a)(6)	To authorize use of reconditioned non-DOT specification blow-molded high molecular weight polyethylene drum, for shipment of certain corrosive solid waste materials (mode 1).
7526-X	DOT-E 7526	Schering, AG, West Berlin, West Germany	49 CFR 173.134	To authorize transport of certain pyrophoric liquids in non-DOT specification portable tanks (modes 1, 3).
7526-X	DOT-E 7526	Dow Chemical Co., Freeport, TX	49 CFR 173.134	To authorize transport of certain pyrophoric liquids in non-DOT specification portable tanks (modes 1, 3).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7555-X	DOT-E 7555	Provost Cartage, Incorporated, Ville d'Anjou, Quebec.	49 CFR 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made from non-metallic materials, for transportation of certain hazardous materials (mode 1).
7605-X	DOT-E 7605	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To authorize transport of certain explosives contained in a partially disassembled aircraft or canopy assembly (modes 1, 3, 4).
7605-X	DOT-E 7605	General Dynamics, Fort Worth, TX	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To authorize transport of certain explosives contained in a partially disassembled aircraft or canopy assembly (modes 1, 3, 4).
7607-X	DOT-E 7607	The Foxboro Company, South Norwalk, CT.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders (modes 4, 5).
7616-P	DOT-E 7616	Denver and Rio Grande Western Railroad Company, Denver, CO.	49 CFR 172.204(a), 172.204(d)	To become a party to Exemption 7616 (mode 2).
7628-X	DOT-E 7628	Chemtech Industries, Inc., St. Louis, MO.	49 CFR 173.264(a)(11), 173.265(b)(3)	To authorize use of DOT Specification 111A100W-5 tank cars equipped with a safety relief valve instead of a vent, for shipment of certain corrosive liquids (mode 2).
7635-X	DOT-E 7635	MG Industries, Valley Forge, PA	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7635-X	DOT-E 7635	Liquid Air Corporation, San Francisco, CA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7635-X	DOT-E 7635	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7635-X	DOT-E 7635	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7635-X	DOT-E 7635	Liquid Carbonic Industries Corporation, Chicago, IL.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7635-X	DOT-E 7635	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7686-X	DOT-E 7686	W. M. Barr & Company, Inc., Memphis, TN.	49 CFR 173.245, 178.210	To authorize shipment of a corrosive liquid, in non-DOT specification metal can/fiberboard box packaging (modes 1, 3).
7928-X	DOT-E 7465	State of Alaska, Department of Transportation, Juneau, AK.	49 CFR 173.119, 173.304, 176.83, 176.905(1), Part 172, Part 176 Subpart H.	To authorize stowage of transport motor vehicles and liquefied petroleum gases aboard passenger vessels (mode 3).
7954-X	DOT-E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.504, 173.301(d)(2), 173.302(a)(3).	To authorize shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders (modes 1, 3).
7985-X	DOT-E 7985	Process Engineering, Incorporated Plaistow, NH.	49 CFR 173.315(a)	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipmnt of nonflammable gases (modes 1, 3).
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specification plywood boxes (mode 1).
8127-X	DOT-E 8127	Union Explosivos Rio Tinto, S.A., Madrid, Spain.	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose (modes 1, 2, 3).
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3.	To authorize use of a non-DOT specification container made of inconel 718 metal, for shipment of a nonflammable gas (modes 1, 2, 4).
8156-X	DOT-E 8156	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfied in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize use of a non-DOT specification composite cylinder, for a compressed nonliquefied gas (modes 1, 4).
8194-X	DOT-E 8194	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m)(6), 173.221(a)(3), 178.205, 178.210-10.	To authorize use of a fiberboard box complying with DOT Specification 12B (excpet for closure method and its one-piece, die-cut design), for shipment of liquid organic peroxides (modes 1, 3).
8215-X	DOT-E 8215	Olin Corp., East Alton, IL	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To authorize shipment of certain identified Class A, B, and C explosives, in non-DOT specification containers (modes 1, 2).
8225-X	DOT-E 8225	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive liquids, flammable liquids or an oxidizer (modes 1, 2, 3).
8249-X	DOT-E 8249	LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W (modes 1, 2, 4).
8255-X	DOT-E 8255	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of nonreusable (nonrefillable) non-DOT specification welded steel cylinders, for shipment of certain nonflammable gases (modes 1, 2, 4).
8256-X	DOT-E 8256	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102-16, 179.202-13.	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device (mode 2).
8308-P	DOT-E 8308	SGP Inc. Courier Service, East Islip, NY.	49 CFR 177.842(a), 177.842(b)	To become a party to Exemption 8308 (mode 1).
8344-P	DOT-E 8344	Hodgdon Powder Company, Shawnee Mission, KS.	49 CFR 173.197a	To become a party to Exemption 8344 (modes 1, 2).
8378-P	DOT-E 8378	Sigma Chemical Company, Saint Louis, MO.	49 CFR 173.268, 175.3	To become a party to Exemption 8378 (modes 1, 2, 4).
8453-X	DOT-E 8453	Atlas Powder Company, Dallas, TX	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent (mode 1).
8540-X	DOT-E 8540	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.83(b) Table II	To authorize shipment of oxygen candles in non-DOT specification triple wall corrugated liberboard boxes (mode 3).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8547-X	DOT-E 8547	Natico, Inc., Chicago, IL	49 CFR 178.116, Part 173 Subpart F	To authorize manufacture, marking and sale of a non-DOT specification 55 gallon steel tight head drum incorporating a molded polyethylene top head, in lieu of a steel top head, for shipment of certain corrosive liquids (modes 1, 2).
8609-X	DOT-E 8609	do	49 CFR 177.841(e), 178.118	To authorize manufacture, marking and sale of non-DOT specification removable head metal drums, for transportation of poison B materials (mode 1).
8627-X	DOT-E 8627	Omega Treating Chemicals, Inc., Midland, TX.	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids (mode 1).
8667-X	DOT-E 8667	Federal Emergency Management Agency, Washington, DC.	49 CFR 173.416	To authorize use of CDV-794 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials (modes 1, 3, 4).
8678-X	DOT-E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases (modes 1, 2, 3).
8678-X	DOT-E 8678	Eurotainer, S.A., Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases (modes 1, 2, 3).
8684-X	DOT-E 8684	General American Transportation Corporation, Chicago, IL.	49 CFR 173.315(a)(1), 178.337(1)(c)(2)(ii).	To authorize manufacture, marking and sale of DOT-Specification MC-331 cargo tanks equipped with a manway cover not fully complying with 49 CFR 178.337-1(c)(2)(ii), for transportation of nonflammable gases (mode 1).
8689-P	DOT-E 8689	Flopetrol Johnston, a Division of Schlumberger, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To become a party to Exemption 8689 (modes 1, 2, 3, 4).
8710-X	DOT-E 8710	Noury Chemical Corporation, Chicago, IL.	49 CFR 173.119, 173.21, 173.221	To authorize transport of solutions of an organic peroxide, in cargo tanks complying with DOT Specification MC-307 and MC-312 (mode 1).
8748-P	DOT-E 8748	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.302, 175.3	To become a party to Exemption 8748 (modes 1, 2, 3, 4, 5).
8813-X	DOT-E 8813	Nebraska Solvents Company, Grand Island, NE.	49 CFR 172.328, 177.834(b)	To authorize display of FLAMMABLE placards, showing identification number (1993), on Nebraska Solvents Company's cargo tanks specified for the materials and having six or more compartments when transporting one or more hazardous materials (mode 1).
8872-P	DOT-E 8872	CIL Inc., Brampton, Ontario, Canada	49 CFR 173.154	To become a party to exemption 8872 (modes 1, 2).
8872-X	DOT-E 8872	Chase Bag Co., Oak Brook, IL	49 CFR 173.154	To authorize shipment of rubber scrap, flammable solid as an additional commodity and to authorize bags to be manufactured of 3 mil polyethylene (modes 1, 2).
8912-X	DOT-E 8912	Rheinpfalzische Emballagenfabrik G. Schonung & Co., Weinstrasse, West Germany.	49 CFR 171.12(c), 178.116-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55-gallon capacity, DOT-17E steel drums (modes 1, 2, 3).
8932-X	DOT-E 8932	Catalyst Resources, Inc., Elyria, OH	49 CFR 173.119(m), 173.221	To authorize shipment of a flammable liquid which is also organic peroxide, in tank motor vehicles complying with DOT specifications MC-307 and MC-312 cargo tanks (mode 1).
8956-X	DOT-E 8956	Clil Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 176.3.	To manufacture, mark and sell certain steel cylinders for transporting samples of liquefied petroleum gas, oil well, natural gas, and other petroleum hydrocarbon gases or liquids (modes 1, 3, 4).
8975-X	DOT-E 8975	Baker Brothers Welding Inc., Norman, OK.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of six sixty gallon non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chasssis, for transportation of flammable and corrosive liquids (mode 1).
8986-X	DOT-E 8986	Cook Slurry Company, Salt Lake City, UT.	49 CFR 173.114a(b)(3)	To authorize transport of slurry blasting agent, in DOT Specification MC-307 cargo tanks constructed of 304 stainless steel (mode 1).
8988-P	DOT-E 8988	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party of Exemption 8988 (modes 1, 3, 4).
8990-X	DOT-E 8990	Pressure Pak, Inc., East Hampton, CT	49 CFR 173.302(a)(1), 175.3, 178.65-2, 178.65-5(a)(4)	To authorize manufacture, marking and sale of non-DOT specification nonrefillable steel inside cylinders, for transportation of nonflammable compressed gases (modes 1, 2, 3, 4, 5).
8992-X	DOT-E 8992	General Dynamics/Pomona Division Aviation Dept., Pomona, CA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B	To authorize transport of certain Class A and B explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment (mode 4).
9014-X	DOT-E 9014	Hunter Drums Limited, Burlington, Ont., Canada.	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of non-DOT specification reusable, high density, blowmolded, ploYethylene containers, for transportation of certain corrosive liquids and oxidizers (mode 1, 2, 3).
9026-X	DOT-E 9026	Continental Fibre Drum, Inc., Lombard, IL.	49 CFR 178.224	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring (mode 1, 2, 3).
9027-P	DOT-E 9027	Wilco Chemical Corporation, Melrose Park, IL.	49 CFR 178.131, 178.28(n), 178.28(m)	To become a party to Exemption 9027 (modes 1, 2).
9040-X	DOT-E 9040	Continental Fibre Drum, Inc., Lombard, IL.	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corrosive liquids (modes 1, 2, 3).
9041-X	DOT-E 9041	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.100(bb), 175.30	To authorize transport of explosives devices as detonating fuzes, in aluminum trays, packed in a DOT Specification 12H fiberboard box (modes 1, 4).
9048-X	DOT-E 9048	Brooks Instrument Div./Emerson Electric Co., Statesboro, GA.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for transportation of flammable liquids and gases (mode 1).
9051-X	DOT-E 9051	Amerex Corporation, Trussville, AL	49 CFR 175.3, 178.50-19	To authorize manufacture, marking and sale of DOT Specification 4B cylinders, with specification marking on the footring, for transportation of certain hazardous materials (modes 1, 2, 3, 4, 5).
9052-X	DOT-E 9052	Chemical Handling Equipment Co., Inc., Southfield, MI.	49 CFR 173.119, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked or linear polyethylene portable tank enclosed in a steel cage or hardwood overpack, for shipment of corrosive and flammable liquids or an oxidizer (modes 1, 2, 3).
9053-X	DOT-E 9053	Delaware Valley Industrial Gases, Inc., Waterford Works, NJ.	49 CFR 173.34(1)(1), 173.34(1)(2), 173.34(1)(3), Part 107, Appendix B.	To authorize rebuilding, retesting, marking and selling of DOT Specification, 4B, 4BA and 4BW cylinders, for transportation of compressed gases, flammable liquids and corrosive materials (modes 1, 2, 3, 4, 5).
9059-X	DOT-E 9059	Boeing Aerospace Co., Seattle, WA	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for transportaton of fluorine, for shipment of a fluorine-helium mixture (modes 1, 2).
9062-X	DOT-E 9062	UOP Process Division, Des Plaines, IL	49 CFR 173.245	To authorize use of DOT Specification 57 carbon steel portable tanks, for transportation of a corrosive liquid (modes 1, 2).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9064-X	DOT-E 9064	Amalgamet Canada—Division of Preminalco Inc. Toronto, Ontario, Canada.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	DOT-E 9064	Optical Fibres, Deeside, Wales	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	DOT-E 9064	Preussag AG Metall, Goslar, West Germany.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	DOT-E 9064	KBI Division of Cabot Corporation, Revere, PA.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	Dot-E 9064	J. T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	Dot-E 9064	Corning Glass Works, Corning, NY	49 CFR 173.245, 173.271	To renew and to authorize silicon tetrachloride, corrosive matorial, as an additional commodity (modes 1, 3).
9078-X	Dot-E 9078	Monsanto Company, Saint Louis, MO	49 CFR 173.245	To authorize use of DOT Specification 57 stainless steel portable tanks, for transportation of a waste formic acid/phenol mixture (mode 1).
9079-X	Dot-E 9079	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315	To authorize use of carbon steel DOT Specification 51 portable tanks, for transportation of a liquefied compressed gas (modes 1, 3).
9088-X	Dot-E 9088	Ethyl Corp., Baton Rouge, LA	49 CFR 173.252, 179.102-7	To authorize use of DOT Specification 105S500W tank car tank with a maximum commodity weight of 178,000 pounds, for transportation of corrosive material (mode 2).
9108-P	Dot-E 9108	Trojan Corporation, Salt Lake City, UT	49 CFR 173.77	To become a party to Exemption 9108 (mode 1).
9129-X	Dot-E 9129	Weldex Corporation, Grafton, MA	49 CFR 173.34, Part 107 Appendix B	To authorize regairing, rebuilding, retesting, marketing and sale of any DOT Specification 4B, 4BA and 4BW low pressure steel cylinders (modes 1, 2, 3, 4, 5).
9130-P	DOT-E 9130	Calgon Corporation, St. Louis, MO	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2).
9130-P	DOT-E 9130	Chem-Tab Chemical Corporation, Carson, CA.	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2).
9130-P	DOT-E 9130	Bio-Lab, Incorporated, Conyers, GA	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2).
9138-X	DOT-E 9138	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize shipment of nitrogen in a fiber reinforced plastic full composite cylinder without a safety relief device (modes 1, 4).
9141-X	DOT-E 9141	Bristol Flare Corporation, Bristol, PA	49 CFR 172.101, 173.108	To authorize transport of certain hand signal devices, as a flammable solid instead of a class C explosive (mode 1).
9154-X	DOT-E 9154	Bennett Industries, Peotone, IL	49 CFR 178.116-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of 19-gauge (one millimeter) thickness, with corrugated top and bottom heads, and having double seamed chime construction, to be used in place of 20/18 gauge, 55-gallon capacity DOT Specification 17E drums (modes 1, 2, 3).
9271-P	DOT-E 9271	Burlington Northern Railroad, Ft.Worth, TX.	49 CFR 174.90	To become a party to Exemption 9271 (mode 2).
9271-P	DOT-E 9271	The Denver and Rio Grande Western Railroad Company, Salt Lake City, UT.	49 CFR 174.90	To become a party to Exemption 9271 (mode 2).

NEW EXEMPTIONS

Application	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9386-N	DOT-E 9386	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a)(1), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification pressure vessel comparable to DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases (modes 1, 2, 4, 5).
9389-N	DOT-E 9389	Chilean Nitrate Sales Corporation, Norfolk, VA.	49 CFR 172.301(a) Part 107 Appen. B(1).	To authorize use of preprinted bags, labeled oxidizer, which are not marked with the proper shipping name and/or identification number, containing sodium nitrate or nitrate, n.o.s. (mode 1, 2).
9452-N	DOT-E 9452	American Chemical & Refining Company, Inc., Waterbury, CT.	49 CFR 177.848	To authorize transport of ammonium hydroxide solutions in the same vehicle with gold and silver cyanide solutions (mode 1).
9428-N	DOT-E 9428	CGTX Inc., Montreal, Quebec, Canada	49 CFR 179.102-2(a)(3)	To authorize use of a DOT Specification 105A500W tank car tank with a modified insulation system, for transportation of a nonflammable gas (mode 2).
9431-N	DOT-E 9431	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.63, 173.65, 173.87, 173.93.	To authorize several types of explosives in the same package, in quantities greater than authorized by 49 CFR 173.87 (mode 1, 2, 4).
9433-N	DOT-E 9433	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.302, 173.303, 173.304	To authorize transport of flammable gases at atmospheric pressure in glass bulbs not exceeding one liter capacity, packed in DOT Specification 12A/12B fiberboard boxes (mode 1).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9470-N	DOT-E 9470	B.F. Goodrich Company, Cleveland, OH.	49 CFR 173.314, 179.100-16	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 105A300W except for certain prescribed bracket reinforcing pads, for transportation of flammable gases (mode 2).
EE 9471-N	DOT-E 9471	Union Oil Company, Los Angeles, CA	49 CFR 173.314, 179.100-16	To authorize use of DOT Specification tank cars which conform to DOT Specification 105A300W or 105J300W, except for certain prescribed bracket reinforcing pads, for transportation of a flammable gas (mode 2).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9473-N	DOT-E 9473	CF Industries, Inc., Long Grove, IL	49 CFR 173.314, 179.100-16	To authorize use of non-DOT specification tank cars which conform to DOT Specification 105S300W except for certain prescribed bracket reinforcing pads, for transportation of a flammable gas (mode 2).
EE 9475-N	DOT-E 9475	Schlumberg Well Services, Rosharon, TX	49 CFR 172.101 column 6(b), 175.320(b), 175.30	To authorize transportation of shaped charges, commercial, aboard cargo aircraft (mode 4).
EE 9476-N	DOT-E 9476	Suffolk Chemical Company, Suffolk, VA	49 CFR 173.249, 179.200-19	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for certain prescribed bracket reinforcing pads, for transportation of a corrosive material (mode 2).
EE 9477-N	DOT-E 9477	Arco Chemical Company, Philadelphia, PA	49 CFR 173.314, 179.100-16	To authorize use of non-DOT specification tank cars which conform to DOT Specification 112J340W, except for certain prescribed bracket reinforcing pads, for tranportation of a flammable gas (mode 2).

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5876-P	BASF Wyandotte Corporation, Parsippany, NJ	49 CFR 173.365, 178.241, Part 107, Appendix B	To become a party to Exemption 5876 (modes 1, 2, 3, 4)

Denials

9215-N—Request by Orchard Supply Company of Sacramento, Sacramento, CA to authorize use of two non-DOT specification cargo tanks as authorized packagings for transportation of carbon disulfide denied July 15, 1985.

9439-N—Request by Unitek Environmental Service, Inc., Honolulu, HI to authorize shipment of lithium batteries for disposal to be transported by cargo vessel denied July 3, 1985.

EE 9461-N—Request by General American Transportation Corporation, Chicago, IL to authorize use of certain DOT Class 105 and DOT Class 111A tank cars which do not conform to the requirements of 49 CFR 179.100-16 and 179.200-19 denied July 8, 1985.

9465-N—Request by McDonnell Douglas Corporation, St. Louis, MO to authorize certain class B and C explosives in Specification packagings or equivalent, to be shipped over a public road within plant without shipping papers, marking or labeling and in mixed loads denied July 22, 1985.

EE 9472-N—Request by Union Oil Company, Schaumburg, IL to authorize use of certain specification tank cars which do not conform to specific requirements denied July 11, 1985.

9474-N—Request by Hamler Industries, Inc., Chicago Heights, IL to ship and transport anhydrous ammonia in four non-DOT specification ASME Code cargo tank motor vehicles denied July 15, 1985.

Issued in Washington, DC, on September 5, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-21978 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85-156]

Customs Broker Licenses—Revocation of Customs Broker's Licenses No. 4549 and 5522

Notice is hereby given that the Assistant Secretary of the Treasury, on August 26, 1985, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR Part 111), revoked the individual Customs broker's license No. 4549 issued to Allen Robbins, Miami, Florida, for the Customs District of Miami, Florida, and the individual Customs broker's license No. 5522 issued to Stuart Robbins, Coral Gables, Florida, for the Customs District of Miami, Florida. This decision effectively revokes the license of the corporate entity Robbins, Inc., license No. 5390. The decision is effective as of 30 days from the publication date of this notice.

William Von Raab,

Commissioner of Customs.

[FR Doc. 85-21950 Filed 9-12-85; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 85-144]

Recordation of Trade Name; "International Business Machines Corporation"

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On June 26, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "International Business Machines Corporation" was published in the **Federal Register** (50 FR 26434). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than August 26, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "International Business Machines Corporation" is recorded as the trade name used by International Business Machines Corporation, a corporation organized under the laws of the State of New York, located at Old Orchard Road, Armonk, New York 10504. The trademark is used in connection with the following merchandise manufactured in numerous foreign countries: information handling systems and associated component and supplies including data processing equipment; copying machines; printers; word processing; electromechanical office equipment; computers; terminals; input and output devices, computer programs, magnetic tape; magnetic disks; diskettes; modems; books, business forms, typewriter ribbons, educational publications and type fonts.

DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Beatrice Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: September 5, 1985.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 85–21951 Filed 9–12–85; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; American Resources Insurance Company, Inc.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United Sates Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1985 Revision, on page 27108 to reflect this addition:

American Resources Insurance Company, Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, Alabama 36691. UNDERWRITING LIMITATION [b]: *$242,000. SURETY LICENSES* [c]: AL, KY, TN. INCORPORATED IN: Alabama. FEDERAL AGENTS [d]:

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or revoked earlier. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Depatment of the Treasury, Washington, DC 20226.

Dated: September 4, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–21916 Filed 9–12–85; 8:45 am]

BILLING CODE 4810–35–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Wednesday, October 1, 1985 at 10:00 a.m., the Denver Regional Office Station Committee on Educational Allowances shall, in the Adjudication Hearing room, Room 410 of the Denver Veterans Administration Regional Office, 44 Union Blvd., Denver, Colorado, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Stereo Equipment Salesman Course, offered by Cummings and Associates, 5701 W. 25th Avenue, Edge Water, Colorado, 80214, should be discontinued as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: September 6, 1985.

James O'Dell,

Assistant Director.

[FR Doc. 85–21875 Filed 9–12–85; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration 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). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 10, 1985.

By direction of the Administrator.

Everett Alvarez Jr.,

Deputy Administrator.

Reinstatement

1. Office of Budget and Finance (Controller)
2. Work-Study Time Record (Veteran-Student Services)
3. VA Form 4–8690
4. On occasion
5. Small business or organizations
6. 40,000 responses
7. 10,000 hours
8. Not applicable

[FR Doc. 85–21939 Filed 9–12–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 18, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 10, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-21982 Filed 9-10-85; 4:41 pm]
BILLING CODE 6210-01-M

2

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1354]

TIME AND DATE: 10:15 a.m. (EDT), Tuesday, September 17, 1985.

PLACE: North Georgia Electric Membership Cooperation's Auditorium, 1850 Cleveland Road, Dalton, Georgia.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 29, 1985.

Action Items

A—Budget and financing

A1. Adoption of supplemental resolution authorizing 1985 Series E power bonds.

A2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1985 Series E power bonds.

A3. Payment from net power proceeds for fiscal year 1985 to the Treasury of the United States.

A4. Short-term borrowing from the U.S. Treasury.

C—Power Items

*C1. Agreement between the Institute of International Education and TVA whereby TVA will conduct an electric utility engineering seminar and internship training course for approximately 20 program participants from underdeveloped countries.

C2. Supplement to Contract No. TV-62313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C3. Amendment to Cooperative Agreement No. TV-65580A with Fluor Constructors, Inc., for erection services for the 160-MW Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

D—Personnel Items

D1. Personal services contract with Management Analysis Company, San Diego, California, providing for services to TVA in connection with implementation of the Regulatory Performance Improvement Plan for the Browns Ferry Nuclear Plant, requested by Power and Engineering (Nuclear).

E—Real Property Transactions

E1. Resolution declaring approximately 2.13 acres of TVA land, located in Scott County, Virginia, as surplus and authorizing its sale by Scott County Redevelopment and Housing Authority as agent of TVA—Tract No. SCRHA-12.

E2. Filing of a Condemnation Case.

F—Unclassified

F1. Supplement to Contract No. TV-65944A between TVA and the Board of Trustees of the University of Alabama providing for a cooperative project to further the marketing and development of export markets for wood and wood products grown and produced in the Tennessee Valley and adjoining region.

F2. Contract No. TV-67505A between TVA and National Park Service providing for a mine reclamation and trail maintenance work project in the Big South Fork National River and recreation area.

F3. Supplement to Contract No. TV-63720A between TVA and Bicentennial Volunteers, Incorporated, for the administration of a TVA retiree volunteer program.

F4. Contract No. TV-67693A between TVA and Agency for International Development (AID) providing for TVA technical assistance in support of the AID infrastructure revitalization project in Grenada, West Indies.

F5. Revised TVA code on the Waste Management Community Assistance Program.

* Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September, 10 1985.

W.F. Willis,
General Manager.

[FR Doc. 85-22053 Filed 9-11-85; 10:17 am]
BILLING CODE 8120-01-M

Federal Register

Friday
September 13, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Delaware:	
DE85–3021	Apr. 19, 1985.
New Jersey:	
NJ85–3031	Aug. 2, 1985.
NJ85–3032	July 19, 1985.
North Dakota:	
ND85–5009	Mar. 1, 1985.
Oklahoma:	
OK85–4034	Aug. 23, 1985.
OK85–4035	August 23, 1985.
Pennsylvania:	
PA85–3012	March 8, 1985.
Rhode Island:	
RI84–3043	November 30, 1984.
Texas:	
TX80–4074	September 26, 1980.
TX85–4019	June 14, 1985.
TX84–4037	May 25, 1985.
Virginia:	
VA85–3020	Apr. 8, 1985.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Maryland: 3052.	(MD81–3031)	MD85–	May 15, 1981.
Virginia: 3051.	(VA82–3034)	VA85–	Dec. 3, 1982

Signed at Washington, DC this 6th day of September 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. ND85-5009 - Mod. #3
(50 FR 8570 - March 1, 1985)
Burleigh, Morton and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Structural, Ornamental & Reinforcing	$14.63	$3.16

DECISION NO. DE85-3021
MOD. #3
(50 FR 15693 - April 19, 1985)
Statewide Delaware

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS (Building Construction)		
New Castle County		
Class 1		
add: - Flaggers		
Kent & Sussex Cos.		
Class 1		
add: - Flaggers		
LABORERS (Heavy Const)		
New Castle County		
General Laborers - Flaggers	10.42	3.63
Kent & Sussex Cos.		
Common Laborers, - Flaggers	8.37	3.63

DECISION #OK85-4034-Mod.#1
50FR34360-August 23, 1985
METROPOLITIAN COUNTIES, OKLAHOMA

	Basic Hourly Rates	Fringe Benefits
CHANGE AREA OF COVERAGE TO READ:		
Canadian, Cleveland, Comanche, Creek, Garfield Logan, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, and Wagoner Counties, Oklahoma.		

DECISION #OK85-4035-Mod.#1
50FR34360-August 23, 1985
RURAL COUNTIES, OKLAHOMA

	Basic Hourly Rates	Fringe Benefits
CHANGE AREA OF COVERAGE TO READ:		
All counties except Canadian, Cleveland, Creek, Comanche, Garfield, Logan, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, and Wagoner, and also, excluding heavy construction within the city limits of Muskogee.		

DECISION NO. PA85-3012
MOD. NO. 5
(50 FR 9568 - March 8, 1985)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
ADD:		
Alarm Installers	$8.15	2.96

DECISION NO. NJ85-3031
MOD. NO. 5
(50 FR 31459 - August 2, 1985)
Bergen, Essex, Hudson (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
ZONE 1B:		
(Heavy & Highway Const):		
Group 1	$13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.90	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
(Free Air Tunnel Jobs):		
Group 1	15.95	3.55
Group 2	14.25	3.55
Group 3	14.10	3.55
Group 4	13.60	3.55
ADD:		
LABORERS:		
ZONE 1B:		
Heavy & Highway Const:		
Group 1		
Traffic directors & salamander tenders:		
Group 2		
Power Tool Operator:		

DECISION NO. NJ85-3032
MOD. NO. 4
(50 FR 29594 - July 19, 1985)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
HEAVY & HIGHWAY CONST:		
LABORERS:		
ZONE 1		
Group 1	13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.80	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
ZONE 2		
Group 1	13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.90	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
Free Air Tunnel Jobs:		
Group 1	15.95	3.55
Group 2	14.25	3.55
Group 3	14.10	3.55
Group 4	13.60	3.55

DECISION NO. RI84-3043
MOD. #7
(49 FR 47171 November 30, 1984)
Statewide Rhode Island

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS:		
Heavy, Highway & Tunnel Flagmen & Signal men	10.50	2.80

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits
DECISION #TX80-4074-MOD.#1 (45 FR 64058 - 9/26/80)		
BONARD COUNTY, TEXAS		
CHANGE:		
Electricians	$14.90	$1.60 + 3.10%
DBCISION #TX85-4019-MOD.# 3 (50 FR 25006 - 6/14/85)		
JEFFERSON & ORANGE COS., TEXAS		
CHANGE:		
Tile Setters:		
Commercial	$15.39	$2.50
Residential	13.80	2.50
DECISION #TX84-4037-MOD.#6 (49 FR 22191 - 5/25/85)		
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, & Wheeler Cos., Texas		
CHANGE:		
Electricians:		
Zone 1:		
Electricians	$14.48	$2.20+ 3.5%
Cable Splicers	15.93	" "
Line Construction:		
Zone 2:		
Lineman	14.48	2.20+ 3.5%
Cable Splicer	15.93	" "
Groundman	9.57	" "
Operator-Hole digger, Line truck	11.15	" "
Flat bed truck driver	8.40	" "
Sprinkler Fitters	16.66	3.40

	Basic Hourly Rates	Fringe Benefits
DECISION NO. VA85-3020-MOD. #3 (50 FR 13706-April 6,1985 HENRICO and the Independent City of RICHMOND		
DELETE:		
IRONWORKERS - Structural Reinforcing and Ornamental	13.75	2.40
ADD:		
IRONWORKERS:		
Power Houses, Pulp Mill Work and Buildings constructed with structural steel and having elevators		
Structural, Reinforcing and Ornamental	13.75	2.42
All Other Work		
Structural, Reinforcing and Ornamental	11.25	2.42
CHANGE:		
LABORERS:		
Laborers	6.75	.71
TO READ:		
Laborers (not listed below)	8.15	.71
POWER EQUIPMENT OPERATORS		
Group 1	13.30	1.875
Group 2	10.64	1.875
Group 3	8.65	1.875
Group 4	8.38	1.875
Group 5	8.25	1.875

SUPERSEDEAS DECISION

STATE: MARYLAND COUNTIES: ALLEGANY AND GARRETT

DBCISION NO.: MD85-3052 DATE: DATE OF PUBLICATION

Supersedes Decision No. MD81-3031 dated May 15, 1981 in 46 FR 27051

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	15.88	5.29
BOILERMAKERS	17.675	2.915
BRICKLAYERS, MARBLE MASONS STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	15.34	1.55
CARPENTERS	14.41	3.74
CEMENT MASONS & PLASTERERS	16.43	1.50
ELECTRICIANS:		
Allegany & Garrett (East of Rt. 219 at the Lake)	15.00	3.50+ 3.75%
Garrett County (West of Rt. 219 at the Lake)	15.40	3.50+ 3.75%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	12.925	2.33+ a&b
Elevator Constructors' Helpers	9.048	2.33+ a&b
Elevator Constructors' Probationary Helpers	6.463	
GLAZIERS	13.44	3.98
IRONWORKERS:		
Structural, Ornamental, & Reinforcing	15.60	3.55
LABORERS:		
Water Boy	10.33	3.50
Laborer, landscape worker, tool checker, dumpman, spotter, handyman	10.61	3.50
Power tool operator, mason & plaster tender, mortar mixer by hand, scaffold builder, mortar mixer by machine hod carrier, concrete puddler, rammer, grade checker, tamper, pipelayer, asbestos worker, burner, large wacker	10.78	3.50
Blaster/dynamite, air track driller, diamond bit driller	11.03	3.50
Tunnel workers: caisson, driller, mucker, laborer	11.63	3.50
Gunnite workers: nozzlemen, gun operator, laborer on scaffold, laborer on ground	10.78	3.50
LATHERS	9.25	.36
LINEMEN-Allegany and Garrett (East of Rt.219)		
Linemen	14.20	2.20+ 3.75%
Equipment Operator	13.49	2.20+ 3.75%
Truck Driver & Groundmen	9.23	2.20+ 3.75%
LINEMEN-Garrett County (West of Rt. 219)		
Linemen	14.60	2.20+ 3.75%
Equipment Operator	13.89	2.20+ 3.75%
Truck Driver & Groundmen	9.63	2.20+ 3.75%
PAINTERS:		
Brush, rollers, wall covering hangers, and installation of seamless type floors	10.45	.50
Spray, sandblasting and use of flame burning and power tools	11.45	.50
Toxic materials-brush and roller	10.95	.50
Toxic materials-spray	11.95	.50
PILEDRIVERMEN	14.84	3.74
PLUMBERS & STEAMFITTERS	15.10	3.23

DECISION NO.: MD85-3052

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group I	15.88	3.30
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:		
130' to 169' plus	$ .40	
170' to 209' plus	.60	
210' to 249' plus	.80	
250' to 299' plus	1.00	
300' & over plus	1.25	
Group II	15.31	3.30
Group III	14.72	3.30
Group IV	14.25	3.30
Group V	13.74	3.30
Group VI	13.26	3.30
ROOFERS:		
Composition	12.35	1.15
Mopmen-composition	12.60	1.15
Slaters	12.55	1.15
SHEET METAL WORKERS	15.24	.48
SPRINKLER FITTERS	16.90	2.40

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group I	11.78	3.45
Group II	12.00	3.45
Group III	12.28	3.45
Group IV	12.55	3.45
Group V	12.87	3.45
Group VI	13.23	3.45
Group VII	13.57	3.45

Footnotes:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

b. Employer contributes 4% of basic hourly rate for 5 years of service or more and 2% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

DECISION NO.: MD85-3052

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group I - Operators handling or setting steel, stone, pre-stressed concrete or machine. Tower Cranes.

Group II - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard guage locomotive, trenching machine, tunnel mucking machine, shirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over welders top scale (more than 6, another man), Elimco type overhead loader, wellpoint systems, mighty midget with compressor, equipment foreman, twin engine scraper (25 yds. & over), mechanic, mechanic's welder, grader, all bulldozer, tire maintenance trucks.

Group III - Tractor with attachments (2 or more).

Group IV - Concrete mixer, concrete pump, one drum hoist, narrow guage locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 CFM), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, excavating scoop, front end loader (up to & including 2 yds.), finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader.

Group V - Fireman, truck crane oiler, wheel tractor, grease truck operator.

Group VI - Oiler, greaser, mechanic's helper, (singe compressor over 180 CFM and up to 210 CFM).

TRUCK DRIVER CLASSIFICATIONS

Group I - Dumpmen.

Group II - Pick-ups, dump trucks (under 5 yds., capacity), straight trucks.

Group III - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds. capacity), Transit mix, dumps (5 to 9 yds. capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks, dispatcher, yardmen.

Group IV - Dump trucks (10 to 15 yds. capacity).

Group V - Dump trucks (over 15 yds. capacity), button and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumpcretes or batch trucks, specialized earth moving equipment, off-highway tandem bark-dump, twin engine equipment & double hitched equipment (where not self-loaded).

Group VI - All equipment listed in Group V over 49 tons to 59 tons.

Group VII - All equipment listed in Group V over 59 tons.

SUPERSEDEAS DECISION

STATE: Virginia

LOCATION: The Cities of Chesapeake, Portsmouth & Virginia Beach

DECISION NO.: VA85-3051

DATE: Date of Publication

Supersedes Decision No. VA82-3034 dated December 3, 1982 in 47 FR 54746

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.23	2.27
BOILERMAKERS	15.80	1.00+ 10%
BRICKLAYERS & STONE MASONS	13.08	1.23
CARPENTERS, LATHERS AND SOFT FLOOR LAYERS	12.35	2.11
CEMENT MASONS:		
Cement Masons	10.85	.40
Machine & Scaffold Men	10.95	.40
ELECTRICIANS AND CABLE SPLICERS	12.75	1.00+ 9%+a
ELEVATOR CONSTRUCTORS	11.845	3.29+ a&b
ELEVATOR CONSTRUCTORS HELPERS	8.29	3.29+ a&b
ELEVATOR CONSTRUCTORS PROBATIONARY HELPERS	5.92	
GLAZIERS	12.30	1.63
IRONWORKERS:		
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	13.75	2.85
LABORERS:		
Laborers(not listed below)	8.15	.71
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunnite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	8.25	.71
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Tile, Terrazzo and Marble Setter Helper	8.40	.71
Burners (wrecking)	8.50	.71
Floor, Base & Terrazzo Grinders	8.55	.71
Wagon Drill and Air Tract	8.65	.71
Powdermen	8.90	.71
LEAD BURNERS	10.75	.66+ c
LINE CONSTRUCTION:		
Linemen and Cable Splicer	13.45	9%+.60
MARBLE SETTERS	12.15	1.20
MILLWRIGHTS	13.95	1.61
PAINTERS:		
Brush and Roller	11.50	.70
Structural Steel from ground to 74 feet	12.00	.70
Spray, Paperhangers and Tapers	11.85	.70
Any Work over 74 feet from the ground	12.80	.70
Bituminous Coating and Hot Cresote	13.15	.70
Swing State under 40 ft. Rollers with 6 ft. handles and over, epoxy brushed or rolled	11.75	.70
Swing Stage over 40 ft.	12.00	.70
Epoxy, sprayed	12.10	.70
Sandblasting	12.25	.70
PILEDRIVERMEN AND DOCK-BUILDERS	12.60	1.80
PLASTERS	13.41	.40
PLUMBERS & STEAMFITTERS	14.15	2.30
ROOFERS COMPOSITION	8.50	
ROOFERS HELPERS (Tearing off old roofing, carrying materials & clean-up)	6.50	
SHEET METAL WORKERS	12.30	2.055
SOUND & SIGNAL INSTALLER	6.00	
SPRINKLER FITTERS	13.87	3.40
TERRAZZO & TILE WORKERS	12.15	1.20
POWER EQUIPMENT OPERATORS		
Group 1	13.30	1.875
Group 2	10.64	1.875
Group 3	8.65	1.875
Group 4	8.38	1.875
Group 5	8.25	1.875

DECISION NO. VA85-3051

WELDERS - Receive rate prescribed for craft performing operation for which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days; Tuesday following the first Monday in November, provided they are qualified to and vote.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years service as vacation pay credit.

c. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS:

Group 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, goad, cableway.

Group 2 - Tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 1S, fort lift.

Group 3 - Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper.

Group 4 - Firemen

Group 5 - Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

[FR Doc. 85-21705 Filed 9-12-85; 8:45 am]
BILLING CODE 4510-27-C

Federal Register

Friday
September 13, 1985

Part III

Department of Agriculture

Competitive Research Grants Program for Fiscal Year 1986; Solicitation of Applications for Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Office of Grants and Program Systems

Competitive Research Grants Program for Fiscal Year 1986; Solication of Applications for Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program for Fiscal Year 1986.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or ogranization, Federal agency, private organization, corporation or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulation governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Specific Research Areas To Be Supported in Fiscal Year 1986

Standard grants and a small number of continuation grants will be awarded to support basic research in selected areas of plant science, human nutrition, biotechnology, animal science, insect pest science, acid precipitation, soybean research, and alcohol fuels research.

The research areas of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnological research is designed to provide opportunities to address research problems in all areas of agricultural science including plants, animals, forestry, and microoganisms associated with these biota. It is anticipated that this research will advance the Nation's competitive advantages in the food, feed, fiber and natural resource processes broadly. Ultimately, this information will be useful for advancing the understanding of key agriculturally important phenomena. Consideration will be given to research proposals which address fundamental questions in the areas noted below and which are consistent with the long-range agricultural needs of the Nation. While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential investigators. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those which may have a more certain payoff potential. In all instances, innovative new research will be given high priority.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as an integral part of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, complete support.

The following specific research areas (program areas) and guidelines are thus provided as a base from which proposals may be developed:

1.0 *Plant Science.*

1.1 and 1.2 *Biological Stress on Plants.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or with other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the reseach supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents, (b) how plants react to stresses generated by interactions with biological agents, and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels (i.e., population, organismal, cellular and molecular) and by various approaches including genetics, molecular biology, and biochemistry. These may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to the understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Biological Stress on Plants, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science,* and

1.2 *Entomology/Nematology,* each of which will have a separate deadline for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. In the subprogram area there will be only one deadline date for proposals dealing with weed science. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

1.3 *Genetic Mechanisms for Crop Improvement.* The goal of this program area is to encourage new and innovative approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel genetic combinations or gene modifications that cannot be achieved by using conventional plant breeding techniques. Studies addressing the basic cellular and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Acquisition of basic information on the structure, function, and expression of plant nuclear and organellar genes; (b) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular

processes involved in regenerating whole plants from single cells; (c) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (d) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (e) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (f) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

1.4 *Biological Nitrogen Fixation.* The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen is of high priority.

In general, the objectives in this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification, the assimilation and utilization of ammonia and nitrate, and denitrification all play important roles in plant growth. Soil nitrogen, whether supplied by biological nitrogen fixation or as a chemical fertilizer, serves to increase food production only when it is present in an available form.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by Rhizobium and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) study of the nitrogen-fixing capabilities of Actinomycetes, Azospirillum spp., Cyanobacteria, and other organisms potentially important in supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) the development of methods for the *in situ* measurement of nitrification and denitrification, and determination of the actual extent of these processes in nature; (g) an analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) studies of the metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) the efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture.

1.5 *Photosynthesis.* Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information of limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (b) photosynthetic carbon assimilation including CO_2 fixation, biochemistry and molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (c) control of photosynthate partitioning, translocation and utilization; (d) factors controlling development and senescence of the photosynthetic apparatus; (e) genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast genome, of nuclear genes regulating photosynthesis and related processes, and analysis of regulatory steps controlling both nuclear and extranuclear gene expression and their interactions; and (f) the photosynthetic process in leaves, whole plants, and canopies, including but not limited to involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes may also be considered a part of this program.

2.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in the program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutrient condition. The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative (creative), fundmental (basic) research.

3.0 *Biotechnology.* Any agriculturally important organism(s) may be used to accomplish the objectives of this program area. However, the use of experimental model systems should be justified relative to the objectives of this research area. In all instances, innovative new research will be given high priority.

3.1 *Molecular Biology.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this category is to increase our understanding of the structure, function, regulation, and expression of genes of plant, animal, and their associated microbial systems.

This subprogram area will emphasize the following categories of research: (a) Identification, isolation and characterization of genes and gene products, (b) relationships between gene structure and function, (c) regulatory mechanisms of gene expression, (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes, (e) mechanisms of gene recombination and transposition, and (f) molecular basis of chromosomal replication, (g) mechanisms of interaction with beneficial or deleterious microorganisms.

3.2 *Molecular and Cellular Mechanisms of Growth and Development.* Suboptimal growth and development are limiting factors in animal and plant productivity. Yet, a basic understanding of the developmental processes in agriculturally important animals and plants is largely lacking. New experimental approaches are being developed through advances in molecular and cell biology. The goal of this subprogram area is to encourage the use of emerging techniques for the investigation of the developmental processes.

This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence, and (b) metabolic processes related to growth and development. Projects designed to identify molecular, cellular and organismal targets for genome manipulation are also encouraged.

3.3 *Genetic and Molecular Mechanisms Controlling Responses to Physical and Biological Stress.* Biological and physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this subprogram area is to understand the molecular basis for the organism's interaction with these stresses and to identify which genetic systems causing these responses can be manipulated by techniques in biotechnology. Research on plants, animals, or their associated microorganisms should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal level; and (e) laboratory and field investigation on the physiology of the organism that contribute to an understanding of the causes, consequences and avoidance of stresses, rather than simply describing the effects of stress. Proposals in the Response to Stress-Animal program will be reviewed and evaluated in the Animal Molecular Biology or Growth and Development panels. Response to Stress proposals have deadline dates in accordance with the appropriate panels.

4.0 *Animal Science.* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in these areas a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

4.1 *Brucellosis.* This subprogram area will support research at the cellular, molecular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and (b) defines the basis of the bovine interactive response with B. *abortus* that results in protective immunity. Proposals are also encouraged which, through molecular biological analyses, identify and produce (a) antigens to differentiate non-infected, vaccinated, and the *B. abortus*-infected cattle, and (b) immunogens to stimulate long-lived protective immunity in cattle.

4.2 *Reproductive Physiology.* This subprogram area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vivo* and *in vitro*, and basic questions regarding gamete transport; and (c) fundamental questions addressing parturition, postpartum interval to conception, and neonatal survival.

Emphasis will be on innovative approaches which may contribute to a thorough understanding of the reproductive processes in agriculturally important food and fiber-producing animals. The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge in one or both of the foregoing areas.

5.0 *Insect Pest Science.* Uncontrolled insect pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing insect pests can be developed, a strong basic insect biology research effort is needed. This program area, restricted to the insect pests listed below, will support research on behavioral physiology; chemical ecology; insect-host interaction; endocrinology; population dynamics; behavioral ecology; insect pathogens, parasites and predators; and epidemiology of beetle-borne pathogens. Proposals bringing a blend of approaches to a specific problem are encouraged.

The Insect Pest Science program will support studies on the following:

5.1. boll weevil/bollworm;

5.2. pine bark beetle; and

5.3 gypsy moth.

6.0 *Acid Precipitation.* Largely single-factor research on above-ground plant tissues has not provided clear evidence of reductions in plant growth or yield following exposure to acid precipitation. There is a need to take advantage of knowledge gained thus far and recognize that the problem is far more complex than initially projected. New research must reflect that complexity. More emphasis should be placed on multiple-factor studies that deal with both direct and indirect effects.

Priority will be given to research projects directly addressing the effects

of acid precipitation on economically important plants, including trees, and associated microorganisms.

These grant funds will continue to be administered as a contribution of USDA to the National (Federal) Acid Precipitation Assessment Program (NAPAP). In the regard, plans for use of these funds are coordinated with research underway or planned by the U.S. Environmental Protection Agency, the Electric Power Research Institute and other organizations working within or in coordination with the NAPAP. This coordination is mandated by the NAPAP to ensure complementarity and to avoid unnecessary duplication.

The research areas encouraged are not in order of priority for funding consideration. Proposals dealing with agricultural crops and forests will be considered.

1. Interactive effects of acidic rain with other atmospheric pollutants on plant productivity and quality.

2. Effects of excess hydrogen, nitrogen and sulfur on heavy metal mobilization and other soil processes.

3. Predisposition of plants to secondary effects (e.g., pathogens, insects, climate) as a result of acid deposition.

4. Mechanisms of response to acid deposition in plant species in which negative effects have been documented.

7.0 *Soybean Research.* The overall goal of this area program is to support long-term, basic biological research on soybeans that can generate new ideas, new knowledge, and innovative technologies which ultimately will contribute to increased productivity of the soybean crop. Interdisciplinary approaches are encouraged. This program area emphasizes research projects that are designed to: (a) Enhance the fundamental understanding of physiology and biochemistry of the soybean, and (b) develop innovative genetic and breeding strategies for enhanced soybean germplasm.

Proposals in this category will be reviewed and evaluated under the appropriate panels noted below. Soybean research proposals have deadline dates in accordance with the appropriate panels.

8.0 *Alcohol Fuels Research.* Proposals will be considered for research relating to the physiological, microbiological, biochemical and genetic processing controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. Studies on factors which limit efficiency of biological production of alcohol fuels and means of overcoming these limitations will be within the scope of this program area.

How To Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for 1985, or who recently requested placement on the list for 1986, will automatically receive copies of this solicitation, the "Research Grant Application Kit," and the regulations governing the Competitive Research Grants Program, 7 CFR 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J. S. Morrill Building, 15th and Independence Avenue, SW., Washington, D.C. 20251. Telephone: (202) 475–5049.

What To Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of the proposal must include a Form S&E–661, "Grant Application," which is included in the "Research Grant Application Kit." Proposers should note that one copy of this form, preferably the original, must contain pen and ink signatures of the principal investigator(s) and the authorized organizational representative.

Each project description is expected by the members of review committees and the staff to be complete in itself. It should be noted that the reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. It would be helpful for the reviewers if the Principal Investigator(s) vitaes were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BEND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the "Research Grant Application Kit" and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Competitive Research Grants Program. Duplicate proposals will be returned without review.

Where and When To Submit Grant Application

Proposals submitted to the research program areas in this notice (e.g., 3.1 Molecular Biology) will be assigned by the Competitive Research Grants Office staff to the most appropriate peer review panel listed below. If necessary, further information may be obtained from the appropriate Associate Program Manager at the telephone numbers given below. Each research grant application must be submitted within the time limits listed below to: Grants Administrative Management, Attention: Competitive Research Grants Program, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J. S. Morrill Building, 15th and Independence Avenue SW., Washington, D.C. 20251. To be considered by the appropriate peer review panel for funding during Fiscal Year 1986 the proposals should be postmarked by the following dates:

Postmark date	Peer review panel	Contacts
November 4	Plant Genetics and Molecular Biology.	475–5042
	Entomology and Nematology	475–5022
	Human Nutrition	475–5034
	Animal Growth and Development.	475–3399
November 12	Photosynthesis	475–5030
	Plant Pathology and Weeds	475–5022
January 13	Plant Growth and Development	475–5042
February 10	Animal Science	475–5034
	Alcohol Fuels	475–5028
February 17	Nitrogen Fixation	475–5030
	Animal Molecular Biology and Brucellosis.	475–3399
February 24	Insect Pest Science	475–5022
	Environmental Stress on Plants	475–5038
	Acid Precipitation	475–5038
March 3	Plant Pathology	475–5022
	Plant Genetics and Molecular Biology.	475–5042

Proposals in the following areas may be submitted for either of two deadlines within the respective areas: (1) Plant Genetics and Molecular Biology—November 4, 1985 or March 3, 1986; (2) Plant Pathology—November 12, 1985 or March 3, 1986. Proposals within each area that are received *after* the first deadline will be held for the second deadline. Proposals within each area that are received *by* the first deadline and rated highly meritorious but not funded initially may be funded after the second deadline. These proposals will

not, however, be re-evaluated. It is anticipated that the majority of funding decisions for proposals received for the first deadline will be made at that time.

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area and subprogram area (specific area of inquiry) should be indicated in Block 8 of Form S&E–661 provided in the Research Grant Application Kit. *Select one program area only.* The number assigned to the specific area of inquiry must also be cited in Block 8 of Form S&E–661. (Example: Biotechnology-Responses to Physical and Biological Stress 3.3). The final determination of the program and subprogram areas will be made by the program staff and/or appropriate peer panel. The code numbers assigned to program areas and subprogram areas are listed below:

1.0 Plant Science (Use *appropriate* subprogram area #1.1 through 1.5)
1.1 Biological Stress on Plants—Plant Pathology and Weeds
1.2 Biological Stress on Plants—Entomology and Nematology
1.3 Genetic Mechanisms for Crop Improvement
1.4 Biological Nitrogen Fixation
1.5 Photosynethesis
2.0 Human Requirements for Nutrients
3.0 Biotechnology (Use *appropriate* subprogram area #3.1 through 3.3)
3.1 Molecular Biology (Gene Structure)
3.2 Molecular and Cellular Mechanisms of Growth and Development
3.3 Responses to Stress
4.0 Animal Science (Use *appropriate* subprogram area #4.1 or 4.2)
4.1 Brucellosis
4.2 Reproductive Physiology
5.0 Insect Pest Science (Use *appropriate* subprogram area #5.1 through 5.3)
5.1 Boll weevil/Bollworm
5.2 Pine Bark Beetle
5.3 Gypsy Moth
6.0 Acid Precipitation
7.0 Soybean Research
8.0 Alcohol Fuels Research

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10206. For reasons set forth in the Final rule related Notice to 7 CRF Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consulation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0525–0001.

The award of any grants under the Competitive Research Grants Program during FY 1986 is subject to the availability of funds.

Done at Washington, D.C. this 9th day of September 1985.

Clare I. Harris,

Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 85–21968 Filed 9–12–85; 8:45 am]
BILLING CODE 3410-MT-M

Federal Register

Friday
September 13, 1985

Part IV

Environmental Protection Agency

40 CFR Part 50

Review of the National Ambient Air Quality Standards for Carbon Monoxide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-2866-6]

Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1971, identical primary and secondary national ambient air quality standards (NAAQS) for carbon monoxide (CO) were promulgated at levels of 9 parts per million (ppm), 8-hour average, and 35 ppm, 1-hour average, neither to be exceeded more than once per year (36 FR 8186). In accordance with sections 108 and 109 of the Clean Air Act, EPA has reviewed and revised the criteria upon which the existing NAAQS for CO are based, and has reviewed those standards to determine if revisions to the standards are appropriate. On August 18, 1980, EPA proposed certain changes in the standards based on the scientific knowledge reported in the revised criteria document for CO (45 FR 55066). Today's notice announces EPA's decision not to revise the existing primary (health) standards at this time and revokes the secondary (welfare) NAAQS for CO. EPA plans to review several ongoing human health effect studies upon their completion and, if warranted, will reexamine this decision at that time.

EFFECTIVE DATE: This action is effective October 15, 1985.

ADDRESSES: A docket (Number OAQPS 79-7) containing information relating to EPA's review of the CO standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., on weekdays, at EPA's Central Docket Section, West Tower Lobby, Gallery I, Waterside Mall, 401 M Street SW., Washington, D.C. A reasonable fee may be charged for copying.

Availability of Related Information

The final revised criteria document, "Air Quality Criteria for Carbon Monoxide" (EPA-600/8-79-022, October 1979; NTIS PB 81-244840, $17.00 paper and $4.50 microfiche), an addendum to the criteria document, "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure" (EPA-600/8-83-033F, August 1984; NTIS PB 85-103471, $10.00 paper and $4.50 microfiche) and the final staff paper, "Review of the NAAQS for Carbon Monoxide: Reassessment of Scientific and Technical Information" (EPA-450/5-84-004, July 1984; NTIS PB 84-231315, $10.00 paper and $4.50 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jones, Strategies and Air Standards Division (MD-12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-5531 (FTS 629-5531).

SUPPLEMENTARY INFORMATION:

Background

Legislative Requirements Affecting This Action

Two sections of the Clean Air Act govern the establishment, review, and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. These air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of the pollutant in the ambient air.

Section 109(a) (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one the attainment and maintenance of which in the judgment of the Administrator, based on the criteria and allowing for an adequate margin of safety, is requisite to protect the public health. The secondary standard, as defined in section 109(b)(2), must specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air.

The courts have upheld EPA's interpretation that the requirement for an adequate margin of safety for primary standards is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards with an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been clearly demonstrated to be harmful, but also to prevent lower pollutant levels that he finds pose an unacceptable risk of harm, even if that risk is not precisely identified as to nature or degree.

In evaluating such risks for the purpose of providing an adequate margin of safety, EPA has considered such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition comes into play where no conclusive showing of harm exists, such factors, which involve unknown, qualitatively defined, or only partially quantified risks, have inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1161-62.

The courts, however, have endorsed a reading of the Act that sets strict limits on the factors EPA may consider in providing an adequate margin of safety for primary standards. The leading judicial decisions state that the economic and technological feasibility of attaining primary standards are not to be relied upon in setting them, even in the context of a margin of safety. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1148-1151; *American Petroleum Institute* v. *Costle*, *supra*, 665 F.2d at 1185, 1190. Such factors may, however, be considered to a degree in the development of State plans to implement the standards.

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. If, in the Administrator's judgment, the Agency's review and revision of criteria make appropriate the proposal of new or revised standards, such standards are to be revised and promulgated in accordance with section 109(b). Alternatively, the Administrator may find that revision of the standards

is inappropriate and conclude the review by leaving the existing standard(s) unchanged. The process by which EPA has reviewed the original criteria and standards for carbon monoxide (CO) under section 109(d) is described in a later section of this notice.

States are primarily responsible for assuring attainment and maintenance of ambient air quality standards. Under section 110 of the Act (42 U.S.C. 7410), States are to submit to EPA for approval State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants included. Other federal programs provide for nationwide reductions in emissions of these and other air pollutants through the federal motor vehicle control program, which involves controls for automobile, truck, bus, and motorcycle under Title II of the Act (42 U.S.C. 7501 to 7534), and through the development of new source performance standards for various categories of stationary sources under section 111 (42 U.S.C. 7411).

Original CO Standards, Revision of the Criteria Document, and Proposed Revisions of the Standards

Original CO Standards. On April 30, 1971, the Environmental Protection Agency (EPA) promulgated NAAQS for CO under section 109 of the Clean Air Act (36 FR 8186). Identical primary and secondary standards were set at levels of 9 ppm, 8-hour average, and 35 ppm, 1-hour average, neither to be exceeded more than once per year. The scientific and medical bases for these standards are described in the document, "Air Quality Criteria for Carbon Monoxide" (DHEW, 1970), published by the U.S. Department of Health, Education, and Welfare in March 1970. The primary standards set in 1971 were based largely on work by Beard and Wertheim (1967) suggesting that low-level CO exposures resulting in carboxyhemoglobin (COHb) levels of 2 to 3 percent were associated with impairment of ability to discriminate time intervals, a central nervous system effect.

Revision of the Criteria Document. On December 1, 1978, EPA announced that it was in the process of reviewing and updating the 1970 document, "Air Quality Criteria for Carbon Monoxide," and called for information that might be helpful in revising the document (43 FR 56250). In the process of developing the revised criteria document, EPA provided a number of opportunities for review and comment by organizations and individuals outside the Agency. Two successive drafts of a revised criteria document, prepared by EPA's Environmental Criteria and Assessment Office (ECAO), were made available for external review, and EPA received approximately 30 written comments on these drafts. The external review drafts of the criteria document were also reviewed by the Clean Air Scientific Advisory Committee (CASAC)[1] Subcommittee on Carbon Monoxide on January 30–31, 1979 and June 14–15, 1979. These meetings were open to the public and were attended by individuals and representatives of organizations who provided critical reviews and new information for consideration. A summary of EPA's responses to the comments on the two external review drafts of the criteria document has been placed in the public docket (Docket No. ECAO–CD–78–3). Transcripts of the two CASAC meetings have also been placed in the docket.

The CASAC prepared a "closure" memorandum (Hovey, 1979) to the Administrator indicating its satisfaction that the final draft of the criteria document was scientifically adequate for standard-setting purposes. The closure memorandum, dated October 9, 1979 also outlines major issues addressed by the CASAC's and CASAC's recommendation concerning those issues. A summary of the issues raised by CASAC and the general public prior to proposal is contained in the proposal notice (45 FR 55080).

On the basis of a careful review of scientific information contained in the revised Criteria Document (EPA, 1979a) EPA's Office of Air Quality Planning and Standards (OAQPS) prepared a Staff Paper (EPA, 1979a) in which several key considerations were identified as major factors to be considered in the possible revision of the CO standards. A draft of the Staff Paper was provided to the CASAC, made available to the public, and reviewed by the CASAC CO Subcommittee on June 14–15, 1979.

Proposed Revisions of the Standards. The principal findings of the Staff Paper are summarized in the August 18, 1980 proposal notice (45 FR 55066). As discussed in this notice and in the revised Criteria Document, the Beard and Wertheim (1967) study, the prinicipal basis for the 1971 primary standards, is no longer considered a sound scientific basis for the standards. However, medical evidence accumulated since 1970 indicated at the time of the 1980 proposal that aggravation of angina pectoris and other cardiovascular diseases could occur at COHb levels as low as 2.7 to 2.9 percent. Assessment of this and other medical evidence led EPA to propose: (1) retaining the 8–hour primary standard level of 9 ppm, (2) revising the 1-hour primary standard level from 35 ppm to 25 ppm, (3) revoking the existing secondary CO standards (since no adverse welfare effects have been reported at or near ambient CO levels), (4) changing the form of the primary standards from deterministic to statistical (i.e., EPA proposed to allow one expected exceedance of each standard level per year), (5) adopting a daily interpretation for exceedances of the primary standards, so that exceedances would be determined on the basis of the number of days on which the 8- or 1-hour average concentrations are above the standard levels (45 FR 55066). The proposal notice set forth in more detail the rationale for these and other proposed revisions of the CO NAAQS and background information related to the proposal.

Developments Subsequent to Proposal

Following proposal, EPA held two public meetings to receive comments on the proposed standard revisions. Meetings were held in Washington, D.C. on October 2, 1980 and Denver, Colorado on October 10, 1980; transcripts are available in the docket (Docket No. OAQPS 79–7). The CASAC CO Subcommittee also met on November 15, 1980 to review the notice of proposed rulemaking (45 FR 55066) with EPA officials, and the CASAC met on November 17, 1981 to hear a status report on the regulation. The public was invited to both CASAC meetings (45 FR 73790 and 46 FR 53210) and transcripts of the meetings have been placed in the docket (Docket No. OAQPS 79–7).

On June 18, 1982 EPA announced (47 FR 26407) an additional public comment period to address several key issues concerning the 1980 proposal and technical documents related to the review of the CO standards. These issues included: (1) role of the Aronow (1981) study, (2) consideration of a multiple exceedance 8–hour standard, (3) the technical adequacy of the revised draft sensitivity analysis on the Coburn model predictions of blood carboxyhemoglobin (COHb) levels, and (4) the technical adequacy of the revised exposure analysis. The CASAC met on July 6, 1982 to provide its advice on these issues. CASAC's recommendations arising from that meeting are summarized in an August

[1] CASAC is a standing committee of scientists and engineers external to the Federal government established under Section 109 of the Clean Air Act to advise the Administrator on the scientific basis for ambient air quality standards.

31, 1982 letter to the Administrator (Friedlander, 1982) which has been placed in the public docket (Docket No. OAQPS 79-7, IV-H-41).

The 1980 proposal was based in part on the evaluation by EPA staff and CASAC in 1979 of several health studies conducted by Dr. Wilbert Aronow. EPA concluded at that time, based in part on the Aronow studies, that COHb levels of 2.7-3.0 percent represent a health concern for individuals with angina and other types of cardiovascular disease. In March 1983 EPA learned that the Food and Drug Administration (FDA) had raised serious questions regarding the technical adequacy of several studies conducted by Dr. Aronow on experimental drugs, leading FDA to reject use of the Aronow drug studies data. While there was then no direct evidence that similar problems might exist for Dr. Aronow's CO studies, EPA concluded that an independent examination of these studies was advisable prior in a final decision on the CO NAAQS.

An expert committee was convened and met with Dr. Aronow to discuss his studies and to examine the limited available data and records from his 1981 CO study. In its report, the Committee (chaired by Dr. Steven M. Horvath, Director of the Institute of Environmental Stress, University of California-Santa Barbara) concluded that EPA should not rely on Dr. Aronow's data due to concerns regarding the research which substantially limit the validity and usefulness of the results (Horvath et al., 1983). In early June 1983, EPA received a detailed reply (Aronow, 1983) from Dr. Aronow disputing, but not effectively refuting, the major points raised in the "Horvath Committee" report.

Addendum to the 1979 Criteria Document and Staff Reassessment. On August 18, 1983, EPA announced (48 FR 37519) the availability of an external review draft of a document entitled "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure: An Addendum to the 1979 Air Quality Criteria Document for Carbon Monoxide" (hereafter cited as Addendum). The Addendum reevaluates the scientific data base concerning health effects associated with exposure to CO at or near ambient exposure levels in light of the Horvath Committee's recommendations concerning Dr. Aronow's studies and taking into account new findings reported beyond those reviewed in the 1979 Criteria Document.

On September 16, 1983 EPA announced the availability of a draft staff paper, "Review of the NAAQS for Carbon Monoxide: 1983 Reassessment of Scientific and Technical Information" (hereafter cited as Staff Reassessment) and solicited public comment on the draft paper (48 FR 41608). The Staff Reassessment, prepared by the OAQPS, provided the staff's assessment of how the scientific data reviewed in the Addendum might be used in selection of final CO standards. CASAC held a public meeting on September 25, 1983 to review both the draft Staff Reassessment. In addition to comments from CASAC members, representation of several organizations also provided critical review of both EPA documents. A transcript of the CASAC meeting has been placed in the public docket (OAQPS 79-7).

The CASAC sent a closure letter to the Administrator on May 17, 1984 which concluded that both the Addendum and Staff Reassessment "represent a scientifically balanced and defensible summary of the current basis of our knowledge of the health effects literature for this pollutant" (Lippmann, 1984). The closure letter, which also discusses major issues addressed by the CASAC and CASAC's recommendations concerning those issues, has been placed in the public docket (Docket No. OAQP 79-7, IV-K-25).

On August 9, 1984, EPA announced (49 FR 31923) the availability of the final Addendum (EPA, 1984b) and final Staff Reassessment (EPA, 1984a) which were revised to reflect public and CASAC comments. Both final documents are available from the address given earlier in the Availability of Related Information Section of this notice. Where there are differences between the 1979 Criteria Document and 1980 proposal assessment of the health effects evidence and the more recent EPA documents, the final Addendum and final Staff Reassessment represented the Agency's interpretation as of their issuance. In the August 9, 1984 notice (49 FR 31923) EPA also reviewed the basis for EPA's proposal to revise the CO standards and solicited additional public comment.

Carbon Monoxide and Human Health Effects

Control of human exposures to sources of CO is important because CO, when inhaled, can enter the bloodstream and disrupt the delivery of oxygen to the body's tissues. A continous and adequate flow of oxygen to the body's tissues is essential to maintain normal health. After being inhaled into the lungs, oxygen normally enters the bloodstream and is delivered, via the circulating blood, to the body's energy-consuming organs, tissues, and cells. Once in the tissue cells, oxygen reacts with nutrients to form energy. This energy is essential to the normal functioning of cells, tissues, and organs.

Humans have specialized molecules in blood and other tissue cells for ensuring a large, continuous flow of oxygen to the tissues. The most important chemical substance is "heme," an iron-containing substance that has a special affinity for oxygen and that combines with proteins to form hemo-proteins. Hemoglobin, a highly specialized hemo-protein contained in red blood cells, binds oxygen to the lungs to form oxyhemoglobin (O_2Hb) and delivers the oxygen to all other tissues where it is released for use.

Unfortunately, CO can also bind to hemoglobin, forming carboxyhemoglobin (COHb), with an affinity that is 200 to 300 times greater than that of oxygen. For this reason, small elevations of CO in ambient air that enters the lungs can result in a relatively large displacement of oxygen from the carrier hemoglobin.

Mechanisms of CO Toxicity

The two principal sources of CO that contribute to levels of CO in the human body are: (1) endogenous CO production from the normal breakdown of hemoglobin constituents in the body and (2) inhalation of exogenous CO from ambient and non-ambient (e.g., occupational and indoor) exposures.[2] Endogenous CO production contributes roughly 0.3 to 0.7 percent of hemoglobin saturation (0.3 to 0.7 percent COH).

Presently, the most important mechanism of CO toxicity at low-level CO exposures is thought to be hypoxia. This mechanism generally involves diffusion of exogenous CO through the lungs into the blood with resultant formation of COHb. Such an increase in COHb levels disrupts normal delivery of oxygen to the tissues in two ways. First, CO displaces oxygen on the hemoglobin carrier so that the hemoglobin has a reduced capacity to carry oxygen through the blood to the tissues (EPA, 1979b). Second, CO makes it more difficult for the oxygen that is still transported by hemoglobin to be released at the tissue (EPA, 1979b). Under these conditions, the tissues must operate at lower than normal levels of oxygen, a condition known as hypoxia, and this amount of oxygen may be inadequate to meet the energy needs of the tissues. The effects of CO on the cardiovascular system, central nervous system, and other systems are thought

[2] The contribution of direct smoking to levels of CO in the body is not a part of this rulemaking

to be directly related to this reduction in the ability of the blood to deliver oxygen to these systems and the resultant oxygen deficiency in the tissues themselves.

Other possible mechanisms of toxicity have been discussed (Coburn, 1979; EPA, 1984b). These alternative mechanisms involve the binding of CO to such intracellular hemoproteins as cytochrome oxidase, myoglobin, tryptophan deoxygenase, and tryptophan catalase. Because the affinity of CO for these proteins is much less than for hemoglobin, it is unlikely that they play a major role in CO hypoxia. However, in tissues with a high oxygen gradient between blood and tissue, it is likely that the interaction of CO with these proteins in these tissues may play a role in CO toxicity. This is particularly true of myoglobin in heart muscle cells. Myoglobin appears to facilitate the movement of oxygen through muscle cells and, as a short-term oxygen reservoir in muscle, it releases oxygen during sudden increased metabolic activity. The affinity of myoglobin for CO is about 40 times greater than the affinity of myoglobin for oxygen. The ratio of CO content in heart muscle to CO content in blood is approximately three. Therefore, given human exposure to CO, substantial amounts of CO may be stored in heart muscle. In situations of sudden, severe stress or exertion, the heart muscle's immediate oxygen supply may be inadequate, even in healthy persons and particularly in persons with a history of disease. This mechanism could provide theoretical support for experimental evidence of myocardial ischemia (in which part of the heart muscle is deprived of oxygen), such as electrocardiographic irregularities and decrements in work capacity discussed later in this notice. It is not known whether binding of CO to myoglobin is related to health effects observed at COHb levels as low as 4–5 percent (EPA, 1979b).

In summary, disruption of the normal transport of oxygen by formation of COHb in the blood appears to be the primary mechanism of CO toxicity. In addition, EPA concludes that regardless of the mechanism of toxicity, COHb levels provide a meaningful and useful physiological marker of the body's CO burden and exposure to exogenous sources of CO (EPA, 1948b).

Health Effects As A Result of CO Exposure

Exposure to high levels of exogenous CO can result in headache, dizziness, drowiness, nausea, vomiting, collapse, coma, or death, depending on how much the flow of oxygen to the body is impeded (EPA, 1979b). The most notorious effects of CO are severe functional losses and death, which can result from automobile or truck emissions trapped in the enclosed interior of a vehicle or garage. In this case, so much hemoglobin is bound with CO that a severely inadequate supply of oxygen is delivered to the tisses; the cause of death is severe hypoxia (or oxygen deficiency). Exposure to lower levels of CO (i.e., levels closer to ambient air levels) is associated with effects on several different organ systems. Because the cardiovascular system (including the heart) and the central nervous system (including the brain) are always active and have a continuous need for oxygen, even when the body is at rest, these organ systems are particularly sensitive to reduced supplies of oxygen.

Cardiovascular System. The heart and blood vessels are critical to human survival because they pump and carry, respectively, blood containing oxygen and essential nutrients to all organs, tissues, and cells of the body, including the brain and the heart muscle itself. Because the heart has almost no ability to function without oxygen, nor the ability (except in situations of clear heart muscle hypoxia) to increase extraction of oxygen from blood, the human body has compensatory mechanisms for ensuring that in low-oxygen situations, the heart continues to receive whatever oxygen is available (EPA, 1979b). These compensatory mechanisms include increasing heart rate, blood pressure, and blood flow to maximize the amount of oxygen available to the muscle (EPA, 1979b). Although these compensatory changes have not been associated experimentally with damage to the cardiovascular system, it is possible that the added stress on the body due to the functioning of the compensatory mechanisms themselves may result in damage to the heart muscle or vasculature (EPA, 1979b). The potential damage includes those effects associated with elevated blood pressure, primarily an increased risk of damage to the arteries, and elevated heart rate, which further increases the heart muscle's demand for oxygen. However, if the coronary arteries supplying the heart muscle are unable to compensate for CO exposure, parts of the heart muscle may receive amounts of oxygen inadequate for normal activity.

As a result, EPA is concerned that CO exposure may increase the risk of the following effects on the cardiovascular system:

- Local myocardial ischemia (in which a part of the heart muscle is deprived of oxygen);
- Aggravation of angina pectoris;
- Heart attack (myocardial infarction), including heart attacks leading to sudden death;
- Reduced exercise and physical work capacity; and
- Enhanced development of arteriosclerosis and coronary artery disease.

Associations between low-level CO exposure and angina and reduced work capacity are supported by human experimental evidence discussed later in this notice. Angina pectoris (or simply "angina") is a group of symptoms of pressure and pain in the chest resulting from a transient episode of insufficient oxygen supply to a portion of the heart muscle (EPA, 1948b). The pain probably results from an accumulation of unoxygenated metabolic products that irritate nerve endings in the heart muscle. The intensity of pain varies from mild chest discomfort to severe and incapacitating distress. Although angina, by definition falls short of inducing death of part of the heart muscle, it can cause serious discomfort, and each attack carries some risk of heart attach. Acute coronary insufficiency, coronary failure, and myocardial infarction result when an episode of ischemia is more prolonged and severe.

An individual with an underlying coronary insufficiency is at risk of having an angina attack under any condition that places an additional demand on the heart. CO exposures can place an added demand on the heart, and, therefore, would appear to increase the risk of having an angina attack, and may increase the risk of a more severe attack. There is some experimental evidence of reduced time to onset of angina attack and increased duration of angina attack associated with low COHb levels (Anderson et al. 1973).

A heart attack is usually a precipitous and frequently fatal consequence of coronary heart disease, which usually results from a sudden reduction or cessation of a significant portion of the blood and oxygen flow normally reaching the heart. Very little is known about the specific factors which induce or precipitate heart attack or sudden death. However, any agent that reduces the supply of oxygen available to the heart muscle in an individual with pre-existing heart disease is suspect as a precipitating factor for heart attacks and sudden death. A relation between elevated COHb and these cardiac effects is plausible in light of what is known about CO toxicity and possible

pathological mechanisms of heart disease.

EPA has reviewed the available epidemiological data relating to hypotheses of an association between elevated COHb or CO exposure and the risk of heart attack, sudden death, and progression of atherosclerosis and has found them to be inconclusive (EPA, 1979b). EPA would like to see further epidemiological research in this area, although, admittedly, these questions will be extremely difficult to resolve with absolute certainty because of the multitude of experimental confounding factors, the multitude of risk factors for heart disease, the variability in human response, and the technical difficulty in investigating them.

Nonetheless, from a theoretical standpoint, associations between CO and these coronary effects are possible. For this reason, and because the health effects in question are very serious, EPA believes that it is prudent to take early signs of cardiovascular effects and other potential, but not well understood, cardiovascular effects very seriously.

Central Nervous System. Elevated COHb levels can reduce the oxygen available to parts of the central nervous system (CNS), including the brain. It appears that the body can compensate, to some extent, by increasing the blood flow through the brain's vasculature (EPA, 1979b). However, in some circumstances compensation may not always occur, leaving the brain with a reduced amount of available oxygen. In addition, or alternatively, prolonged compensation may damage the brain's blood vessels (EPA, 1979b).

When elevated COHb reduces the amount of oxygen delivered to the brain to a level which is below critical needs, two types of damage may result. First, severe acute oxygen deprivation of sufficient duration and intensity can result in a stroke (the damage or death of brain cells (neurons)). Loss of mature brain cells is irreversible since the CNS is not thought capable of replacement of neurons. Depending upon the duration of oxygen deficit to the brain, the effects may range from unconsciousness and convulsions, brain swelling and protrusion, to death of parts of the brain or death of the individual. Individuals who recover often have significant deficits in brain function. Second, repeated episodes of impaired oxygen supply would be expected to damage the blood-brain barrier and possibly cause structural damage resulting in the inability of the CNS to transmit information.

At lower COHb levels there is evidence of neurobehavioral effects: impaired learning ability, reduced vigilance (ability to detect small changes in a subject's environment), decreased manual dexterity, impaired performance of complex tasks, and disturbed sleep activity (EPA, 1984b). Although the potential influence of ambient CO levels on drivers has received only slight attention, suggestive but not conclusive evidence has indicated that drivers in fatal auto accidents often have elevated COHb levels (Yabroff et al., 1974). There is no evidence with which to determine whether these effects at lower CO levels are associated with pathological changes to the CNS or with reduced oxygen tension in the CNS. Due to redundancy in structure of the CNS, functional changes (e.g., behavior changes) may not be observed until the structural damage is great. Observation of such effects may be more likely in the case of a severe reduction in oxygen or in an individual who has a history of an impaired oxygen delivery system.

Basis for Decision Not To Revise the Primary Standards

The current primary NAAQS for CO are 10 mg/m^3 (9 ppm), 8-hour average and 40 mg/m^3 (35 ppm), 1-hour average, neither of which is to be exceeded more than once per year. As indicated above, the Act requires review of the existing criteria and ambient air quality standards for CO and other pollutants every five years. During the current standard review for CO, EPA has considered whether it should retain the existing CO primary standards, repropose the same or different standards, or promulgate the revisions proposed in August 1980. For the reasons discussed below, the Administrator has concluded that there is no need to revise the existing primary CO standards at this time.

As indicated above, section 109(b)(1) of the Clean Air Act requires EPA to set primary standards, based on the air quality criteria which, in the Administator's judgment, are requisite to protect the public health with an adequate margin of safety. The legislative history of the Act makes clear the Congressional intent to protect sensitive persons who in the normal course of daily activity are exposed to the ambient environment. Air quality standards are to be established with reference to protecting the health of a represenative, statistically related, sample of persons comprising the sensitive group rather than a single person in such a group.

EPA's objective in reviewing primary standards, therefore, has been to determine whether new or revised standards are appropriate, based on the existing scientific evidence, assessment of the uncertainties in this evidence, understanding of underlying biological mechanisms, and the need to make a reasonable provision for scientific and medical knowledge yet to be acquired, in order to protect sensitive population groups with an adequate margin of safety. As for other ambient standard pollutants, none of the evidence presented in the 1979 Criteria Document or Addendum shows a clear threshold for adverse health effects of CO. Rather, there is a continuum, ranging from CO levels at which health effects are undisputed, through levels at which many, but not all scientists generally agree that health effects have been convincingly shown, down to levels at which the indication of health effects are less certain and more difficult to identify. This does not necessarily mean that there is no threshold, other than zero, for CO related health effects; it simply means that no precise threshold can be identified with certainty based on existing scientific evidence. Thus, in setting a standard, EPA is unable to append an exact margin of safety to a known threshold effect level. Rather, setting a standard with an adequate margin of safety is necessarily a public health policy judgment that must take into account both the known continuum of effects, understanding of the underlying biological mechanisms of effects, and any gaps and uncertainties in the existing scientific data base.

In determining whether revision of the primary CO standards is appropriate, EPA has made assessments and judgments in the following areas:

1. Identification of reported effect levels and associated exposure duration that scientific research has linked to health effects in healthy and sensitive persons.

2. Characterization of scientific uncertainties in the health effects evidence and judgments concerning which effects are important to consider in reviewing or setting primary standards.

3. Description of population groups believed to be most sensitive to CO and estimates of the size of those groups.

4. The estimated number of sensitive persons that would be exposed to elevated CO levels upon attainment of a given standard and the uncertainties in these exposure estimates.

5. The uncertainties in estimating carboxyhemoglobin (COHb) levels that result from exposures to CO.

6. Consideration of CO standard levels and averaging times that provide an adequate margin of safety based on CO levels and exposure periods that may affect sensitive population groups.

taking into account the various uncertainties.

Based on the assessment of relevant scientific and technical information in the Criteria Document and the Addendum, the Staff Reassessment outlines a number of key factors to be considered in each of the above areas. Both the staff and CASAC recommended that the Administrator focus consideration on a discrete range of policy options in each area. In most respects, the Administrator has adopted the recommendations and supporting reasons contained in the Staff Reassessment, the most recent CASAC closure letter (Lippmann, 1984) and applicable portions of the earlier Staff Paper (EPA, 1979b) and CASAC closure letters (Hovey, 1979; Friedlander, 1982). Rather than reiterating those discussions at length, the following discussion of the final decision focuses primarily on those considerations that were most influential in the Administrator's selection of a particular option, or that differ in some respect from considerations that influenced the staff and/or CASAC recommendations.

Assessment of Health Effects Evidence

The Staff Reassessment, which has been placed in the public docket (Docket No. OAQPS 79-7, IV-A-10), presents an assessment by OAQPS staff of the key health effect studies contained in the 1979 Criteria Document and in the Addendum and other critical scientific and technical issues relevant to the review of the existing CO standards.

TABLE 1.—LOWEST OBSERVED EFFECT LEVELS FOR HUMAN HEALTH EFFECTS ASSOCIATED WITH LOW LEVEL CARBON MONOXIDE EXPOSURE

Effects	COHb concentration (percent)*	References
Statistically significant decreased (~3-7%) work time to exhaustion in exercising young healthy men.	2.3-4.3	Horvath et al., 1975, Drinkwater et al., 1974, Raven et al., 1974.
Statistically significant decreased exercise capacity (i.e., shortened duration of exercise before onset of pain) in patients with angina pectoris.	2.9-4.5	Anderson et al., 1973.
Statistically significant decreased maximal oxygen consumption and exercise time during strenuous exercise in young healthy men.	5-5.5	Klein et al., 1950, Stewart et al., 1978, Weiser et al., 1978.
No statistically significant vigilance decrements after exposure to CO.	Below 5	Haider et al., 1976, Winneke, 1974, Christensen et al., 1977, Beragnus et al., 1977, Putz et al., 1976.
Statistically significant impairment of vigilance tasks in healthy experimental subjects.	5-7.6	Horvath et al., 1971, Groll-Knapp et al., 1972, Fodor and Winneke, 1972, Putz et al., 1976.
Statistically significant diminution of visual perception, manual dexterity, ability to learn, or performance in complex sensorimotor tasks (such as driving).	5-17	Benider et al., 1971, Schulte, 1973, O'Donnell et al., 1971, McFarland et al., 1944, McFarland, 1973, Putz et al., 1976, Salvatore, 1974, Wright et al., 1973, Rockwell and Weir, 1975, Rummo and Sartanis, 1974, Putz et al., 1979, Putz, 1979.
Statistically significant decreased maximal oxygen consumption during strenuous exercise in young healthy men.	7-20	Ekblom and Huot, 1972, Pimay et al. 1971, Vogel and Glese, 1972.

* The physiologic norm (i.e., COHb levels resulting from the normal breakdown of hemoglobin and other heme-containing materials) has been estimated to be in the range of 0.3 to 0.7 percent (Coburn et al., 1963).

Table 1 is a summary of key clinical studies reporting human health effects associated with low-level exposures to CO. This table is based on evidence discussed in the 1979 Criteria Document (EPA, 1979a) and in the Addenum (EPA, 1984b) but excludes a series of studies by Dr. Aronow for reasons given below. The table is included primarily as an aid for the following discussion and should be used only in conjunction with qualifying statements made in the 1979 Criteria Document, in the Addenum, in the Staff Reassessment, or in this notice regarding the technical merits of each study.

Cardiovascular Effects. In reviewing the primary standards, a principal area of concern to the Administrator has been evidence linking aggravation of angina and other cardiovascular diseases to CO exposures. Angina patients who have been exposed to low levels of CO while resting have subsequently exhibited, during exercise, reduced time to onset of angina (Anderson et al., 1973). Increased duration of angina attacks has also been reported (Anderson et al., 1973). In proposing to revise the CO standards, EPA viewed aggravation of angina, as reported above, to be an adverse health effect (45 FR 55066) and CASAC concurred with EPA's judgment on this matter.

One controlled human exposure study (Anderson et al. 1973) reported that experimental subjects with angina exhibited statistically significant reduced time to onset of exercise-induced angina after exposure to low levels of CO resulting in mean COHb levels of 2.9 (range 1.3-3.8 percent) and 4.5 percent (range 2.8-5.4 percent). In the same study, it was reported that subjects experienced statistically significant increases in duration of angina attacks during exercise at a mean COHb level of 4.5 percent. Some concerns have been raised about the study findings due to ambiguities regarding the design and conduct of the study and the small number of subjects (N = 10) examined. However, as discussed in the Addendum and in a subsequent section of this notice, a reevaluation of the Anderson et al. (1973) study, addressing major points of concern, found that the study provides reasonably good evidence for the hastening of angina occurring in angina patients at COHb levels of 2.9 to 4.5 percent.

In similar studies Aronow and Isbell (1973) and Aronow (1981) reported decreased time to onset of angina for exercising subjects with reported COHb levels in the range of 2 to 3 percent. In addition, Aronow et al. (1974) reported that subjects with peripheral vascular disease had reduced time to onset of leg pain at similar COHb levels. As discussed earlier in this notice, however, an expert committee convened to conduct an independent review of these CO studies expressed considerable concern about the validity of the result reported and concluded that EPA should not rely on Dr. Aronow's data (Horvath et al., 1983).[3] As stated earlier in this notice, Dr. Aronow provided EPA a detailed reply disputing, but not effectively refuting, the substance of the concerns raised by the Committee (Aronow, 1983). The Committee also recommended that EPA pursue and support both current in-house and independent scientific research to resolve the issues raised by the reevaluation of Dr. Aronow's CO studies. Because EPA shares the concerns raised by the committee and by some public comments, the Administrator has not considered Dr. Aronow's studies in his decision on the CO primary standards.

[3] The Committee's concerns included (1) apparent failure to maintain a "double blind" approach as reported in the publications, (2) raw data were lost or discarded, (3) available data were of poor quality, (4) quality control for COHb measurements was nonexistent or inadequate, and (5) there appeared to be discrepancies between hospital record descriptions of patient diagnosis and those reported in Dr. Aronow's publications (Horvath et al., 1983).

Another cardiovascular effect of concern is the possible detrimental effect of increased blood flow that occurs as a compensatory response to CO exposure (Ayres et al., 1969; Ayres et al., 1970; and Ayres et al., 1979). This effect may be related to coronary damage or cerebrovascular effects at very high blood flow rates due to the added stress on the cardiovascular system. However, community epidemiological studies have been inconclusive. In particular, based on EPA's evaluation of the Goldsmith and Landau (1968), Kurt et al. (1978), and Kurt et al. (1979) epidemiological studies, the relationship between CO exposures and effects such as mortality from myocardial infarction (heart attack), sudden death due to arteriosclerotic heart disease, and cardiorespiratory complaints remains in question.

Maximum aerobic capacity and exercise capacity are indirect measures of cardiovascular capacity which have been reported to be reduced in several carefully conducted studies involving normal healthy adults exposed to CO. A linear decline in maximum aerobic capacity for healthy individuals was reported for COHb levels ranging from 5–20 percent in a series of studies (Stewart et al., 1978; Weiser et al., 1978; and Ekblom and Huot, 1972). Horvath et al. (1975) found decreases in maximum aerobic capacity when COHb levels were 4.3 percent and that COHb levels of 3.3 and 4.3 percent reduced work time to exhaustion by 4.9 and 7.0 percent, respectively. The effects of lower CO exposure levels in healthy individuals have also been investigated under conditions of short-term, maximum exercise duration. In a series of studies involving different CO exposure levels, two alternative ambient temperatures (25°C and 35°C), and two different healthy adult populations (young and middle-aged), no statistically significant reduction in maximum aerobic capacity was observed for either group when CO exposures were compared with the clean air control. However, small (less than or equal to 5 percent) decreases in absolute exercise time were consistently observed in the non-smoking subjects whose COHb levels reached 2.3 and 2.5 percent (Drinkwater et al., 1974; Raven et al., 1974). These effects, while not as serious as aggravation of angina, are still a matter of concern since they have been found to occur in healthy individuals and such effects might impair the normal activity of more sensitive populations. Therefore, these effects have been considered in judging which CO standards provide an adequate margin of safety.

Central Nervous System Effects. Numerous studies (Putz et al., 1976; Bender et al., 1971; Schulte, 1973; O'Donnel et al., 1971; McFarland et al., 1944; McFarland, 1973; Salvatore, 1974; Wright et al., 1973; Rockwell and Weir, 1975; and Rummo and Sarlanis, 1974) have reported effects on the central nervous system for CO exposures resulting in COHb levels in the range 5–17 percent. The range of effects reported included impairment of vigilance, visual perception, manual dexterity, learning ability, and performance of complex tasks. While one study (Beard and Grandstaff, 1975) has suggested that vigilance effects may occur at levels as low as 1.8 percent COHb, several other studies (Haider et al., 1976; Winneke, 1976; Christensen et al., 1977; Benignus et al., 1977; and Putz et al., 1976) have not found any vigilance decrements below 5 percent COHb. Measurement methods used to detect effects may have been too insensitive to detect changes in the latter vigilance studies. Based on the assessment of the above mentioned studies, the Addendum concluded that, at least under some conditions, small decrements in vigilance occur at 5 percent COHb. A series of studies (Putz et al., 1976; Putz et al., 1979; and Putz 1979) has also found that 5 percent COHb produced decrements in compensatory tracking, a hand-eye coordination task. EPA considers hand-eye coordination effects as well as decrements in vigilance to be important since these functions are components of more complex tasks, such as driving, and reduced alertness or visual sensitivity could lead to increased vehicular accidents.

Fetal Effects. Based on limited animal toxicology data, the 1979 Criteria Document and the Addendum (EPA, 1984b) suggest that CO may produce effects on the fetus or newborn. CO from long-term or intermittent exposures is taken up and eliminated more slowly in the fetus than in the mother, so that a maternal exposure can result in mean fetal COHb concentrations well above maternal COHb levels (EPA, 1979b). Elevated COHb levels may lead to interference with fetal tissue oxygenation during development. Because the fetus may be developing at or near critical tissue oxygenation levels, even exposures to moderate levels of CO may produce deleterious effects on the fetus such as reduced birth weight, increased newborn mortality, and lower behavioral activity levels (Longo, 1977), although this remains to be demonstrated along with pertinent dose-response relationships (EPA, 1984b). Evidence from smoking mothers is suggestive of similar fetal and newborn effects due to CO exposures (Peterson, 1981). While the fact that cigarette smoke contains substances other than CO prevents a direct quantitative application of the results of these studies in setting the CO primary standards, these studies do suggest the need for caution in protecting unborn children from such potentially deleterious effects of CO exposures.

As discussed in the Addendum and Staff Reassessment, research on sudden infant death syndrome (SIDS) recently has suggested a possible link between ambient CO levels and increased incidence of SIDS (Hoppenbrowers et al., 1981). In response to this study, Goldstein (1982) has suggested that indoor sources of CO, as well as other pollutants (e.g., nitrogen dioxide, lead), may be at least as important as ambient CO in causing SIDS and that several covariates (e.g., seasonal trends) may be responsible for the associations reported. Because the number of potentially confounding factors makes finding an association between CO and SIDS extremely difficult, further confirmation is needed before any causal relationship can be inferred (EPA, 1984a; EPA, 1984b).

Sensitive Population Groups

In EPA's judgment, the available health effects data identify persons with angina or other types of cardiovascular disease (e.g., history of heart attack or peripheral vascular disease) as the groups at greatest risk from low-level, ambient exposures to CO. Based on 1980 census data (DOC, 1980) and earlier U.S. National Health Examination Survey data (DHEW, 1975), this group is estimated to number approximately 8.7 million individuals. As discussed previously, the concern for persons with cardiovascular disease results from the fact that their condition is due to an insufficient oxygen supply to cardiac tissue, so that persons with this condition have an inadequate oxygen reserve capacity and an impaired ability to compensate for the effects of excess CO.

The Addendum and Staff Reassessment also identify several other groups as likely to be particularly sensitive to low-level CO exposures based on EPA's review of the health effects evidence. These groups include: (1) persons with chronic respiratory disease (e.g., bronchitis, emphysema, and asthma), (2) elderly individuals, especially those with reduced

cardiopulmonary function, (3) fetuses and young infants, and (4) individuals suffering from anemia and those with abnormal hemoglobin types that affect oxygen carrying capacity or transport in the blood. In addition, individuals taking certain medications or drinking alcoholic beverages may be at greater risk for CO-induced effects based on some limited evidence suggesting interactive effects between CO and some drugs. Visitors to high altitude locations are also expected to be more vulnerable to CO health effects due to reduced levels of oxygen in the air they breathe. Finally, individuals with some combination of the disease states or conditions listed above (e.g., individuals with angina visiting a high altitude location) may be particularly sensitive to low-level CO exposures, although there is no experimental evidence to confirm this hypothesis.

For many of the groups cited above there is little specific experimental evidence to clearly demonstrate that they are indeed at increased risk for CO-induced health effects. However, it is reasonable to expect that individuals with preexisting illnesses or physiological conditions which limit oxygen absorption into blood or its transport to body tissues would be more susceptible to the hypoxic (i.e., oxygen deficiency) effects of CO. Since no human experimental evidence exists that identifies CO effect levels for these other groups, however, EPA is considering the possible effects of CO on these groups only in its determination of an adequate margin of safety.

Uncertainty in Estimating COHb Levels

The health effect studies discussed above report the effects observed at varying COHb levels. In order to make decisions about ambient CO standards based on these studies, it is necessary to estimate the ambient concentrations of CO that are likely to result in COHb levels at or near those observed in the studies. A model known as the Coburn equation (Coburn et al., 1965) has been developed to estimate COHb levels resulting from CO concentrations as a function of time and various physiological factors (e.g., blood volume, endogenous CO production rate). Table 2 presents "baseline" estimates (using typical values for the various physiological parameters) of COHb levels expected to be reached by adult nonsmokers exposed to various constant concentrations of CO for either 1 or 8 hours based on the Coburn model.

TABLE 2.—PREDICTED COHb RESPONSE TO EXPOSURE TO CONSTANT CO CONCENTRATIONS ASSUMING TYPICAL VALUES FOR PHYSIOLOGICAL PARAMETERS

[Percent COHb Based on Coburn Equation[a] Exposure Time

CO (ppm)	1 hour exposure		8 hours exposure	
	Intermittent rest/light activity	Moderate activity	Intermittent rest/light activity	Moderate activity
7.0	0.7	0.7	1.1	1.1
9.0	0.7	0.8	1.4	1.4
12.0	0.6	0.9	1.7	1.8
15.0	0.9	1.1	2.1	2.2
20.0	1.1	1.3	2.7	2.9
25.0	1.2	1.5	3.4	3.6
35.0	1.5	2.0	4.6	4.9
50.0	2.0	2.7	6.4	6.9

[a]Assumed parameters for non-smoking adults: alveolar ventilation rates = 10 liters/min (intermittent rest/light activity) and 20 liters/min (moderate activity); hemoglobin = 15 g/100 ml (normal male); altitude = sea level; initial COHb level = 0.5 percent; endogenous CO production rate = 0.007 ml/min; blood volume = 5500 ml, Haldane constant (measure of affinity of hemoglobin for CO) = 218; lung diffusivity for CO = 30 ml/min/torr.

TABLE 3.—PERCENTAGE OF NON-SMOKING ADULTS WITH CARBOXYHEMOGLOBIN GREATER THAN OR EQUAL TO SPECIFIED PEAK VALUE WHEN EXPOSED TO AIR QUALITY ASSOCIATED WITH ALTERNATIVE EIGHT-HOUR CARBON MONOXIDE STANDARDS [a,b,c]

Peak COHb percent	9 ppm, 8-hr			12 ppm, 8-hr		
	Low pattern	Mid-range pattern	High pattern	Low pattern	Mid-range pattern	High pattern
3.7						<0.01
3.5						0.01
3.3						0.1
3.1					<0.01	0.6
2.9			<0.01		0.01	2
2.7			0.02	<0.01	0.2	9
2.5		<0.01	0.2	0.01	2	36
2.3		0.02	2	0.2	12	84
2.1	<0.01	0.4	10	4	49	100
1.9	0.05	5	53	36	88	100
1.7	3	35	98	91	99	100
1.5	39	88	100	100	100	100
1.3	97	100	100	100	100	100
1.1	100	100	100	100	100	100

[a] COHb responses to fluctuating CO concentrations were dynamically evaluated using the Coburn model prediction of the COHb level resulting from one hour's exposure as the initial COHb level for the next hour. The series of 1-hour CO concentrations used were from 20 sets of actual air quality data. Each pattern was proportionally rolled back or up so that its peak 8-hour average CO concentration equalled the level of the 8-hour standard. Of the 20 selected patterns, results from 3 patterns are presented here. The low pattern tends to give the lowest peak COHb levels, the midrange pattern tends to give a midrange value, and the high pattern tends to give the highest value.

[b] Haldane constant = 218. Alveolar ventilation rate = 10 liters/min. Altitude = 0.0 ft.

[c] The estimation of distributions for each of the physiological parameters used in the Coburn model and the Monte Carlo procedure used to generate these estimates are discussed in Appendix C of the Sensitivity Analysis (Biller and Richmond, 1982).

There are, however, at least two uncertainties involved in estimating COHb levels resulting from exposure to CO concentrations. First, for each of the physiological parameters used in the Coburn model, there is a distribution of values in the general population. These variations are sufficient to produce noticeable deviations from the COHb levels in Table 2, which as noted above were predicted using a set of typical physiological parameter values. Second, predictions based on exposure to constant CO concentrations inadequately represent the responses of individuals exposed to widely fluctuating CO concentrations that typically occur in ambient exposure situations.

As discussed in the proposal preamble (45 FR 55066), EPA attempted to represent these uncertainties in a draft Sensitivity Analysis (EPA, 1980). This analysis used the Coburn model to examine the effects of fluctuating CO concentrations and variations in physiological parameters on COHb estimates. Since proposal, EPA has revised the Sensitivity Analysis to address concerns raised in several public comments and placed the report (Biller and Richmond, 1982) in the docket (QAQPS 79-7, IV-A-8). Table 3 presents estimates of the distribution of COHb levels in the adult non-smoking population based on variations in physiological parameters upon exposure to three different patterns of CO levels which just meet alternative 9 ppm and 12 ppm CO standards. The estimates given in Table 3 and others contained in the Sensitivity Analysis report (Biller and Richmond, 1982) are based on the assumption that the entire adult population is exposed to CO levels just meeting a given standard.

The impact of fluctuating air quality levels on COHb uptake can be roughly estimated by comparing the "baseline" result of a constant 9 ppm exposure for 8 hours (1.4 percent COHb from Table 2) with selected results shown in Table 3. For a "typical" (50th percentile) adult exposed to several different air quality patterns that result in the same maximum 8-hour dose (i.e., 9 ppm, 8-hour average), the results shown in Table 3 indicate that COHb levels ranging from approximately 1.4 to 1.9 percent can be reached. A similar comparison of the results for air quality with a 12 ppm, 8-hour average peak exposure indicates that fluctuating CO levels can increase the peak COHb value from that observed with a constant CO exposure by up to 0.7 percent OCHb (i.e., from 1.7 percent COHb in Table 2 to 2.4 percent COHb for the 50th percentile in the high pattern column of Table 3).

The Sensitivity Analysis results in Table 3 also illustrate the effect of using distributions of values for each physiological parameter rather than just a single representative set of values in applying the Coburn model. For any given air quality pattern, the effect of using the distribution of values for each physiological parameter is to generate a distribution of peak COHb levels that the population would reach. For example, the results in Table 3 show that 95 percent of the population is estimated to be within ±0.3 percent COHb of the median adult value after exposure to the midrange pattern with a peak 9 ppm, 8-hour average. This variation in COHb levels attained is one further source of uncertainty that is being considered in judging which standards provide an adequate margin of safety.

Since proposal, EPA has made considerable improvements in its exposure analysis methodology which, unlike the Sensitivity Analysis, treats movement of people and variation of CO concentration levels through time and space. EPA believes that the revised Exposure Analysis described below, represents the best available tool for estimating the percentage of the population that would reach various CO concentrations and COHb levels upon attainment of alternative CO standards. Since the Exposure Analysis model simulates the exposure of individuals on an hourly basis and simulates actual air quality patterns, the impact of fluctuating CO levels is largely taken into account in the Exposure Analysis results. The results of the revised Sensitivity Analysis are useful, however, in characterizing the uncertainties resulting from variations in physiological parameters in the population which at this time are not fully accounted for in the Exposure Analysis.

Exposure Analysis Estimates

EPA's revised exposure analysis report and addendum, "The NAAQS Exposure Model (NEM) Applied to Carbon Monoxide," (Johnson and Paul, 1983; Paul and Johnson, 1985) contain estimates of the numbers and percentages of urban American adults that would be exposed to various ambient CO levels if alternative 8-hour CO standards were just attained. In addition, estimates have been made of the percentage of this population that would exceed selected COHb levels each year. These latter estimates were derived by applying the Coburn model, which relates patterns of CO exposure to resultant COHb levels, to the exposure model outputs using a typical set of physiological parameters for adult men and a separate set of physiological parameters for adult women.

In contrast to the Sensitivity Analysis, the Exposure Analysis simulates pollutant concentrations and the activities of people with regard to time, place, and exercise level. In the exposure model, the population is represented by a set of "cohorts" (i.e. age-occupational groups that tend to "track together" in time and space). For each hour of the year each cohort is located in one of five "microenvironments." A microenvironment is a general physical location such as indoors-at-home or inside a transportation vehicle.

CO levels in each of the microenvironments are estimated by the use of multiplicative "transformation factors," which relate CO levels recorded at the nearest monitor to estimate CO levels for each microenvironment. This method is used since attainment of a standard is defined in terms of the monitoring system. Values of the multiplicative transformation factors that would give the best exposure estimates are uncertain. The values used for these factors were estimated making use of the available literature on (1) indoor and inside-motor-vehicle air pollution and (2) statistical analyses of monitoring data (e.g., how ambient values change with height and distance from a monitor). A more detailed description of the approach, input data, and assumptions used to derive exposure estimates appears in the Exposure Analysis reports (Johnson and Paul, 1983; Paul and Johnson, 1985).

The exposure analysis model described above was applied to four urban areas: Chicago, Los Angeles, Philadelphia, and St. Louis. Exposure estimates for the adult population living in urban areas in the United States were obtained primarily by associating each urban area in the United States having a population greater than 200,000 with one of the four cities mentioned above. The association was made on the basis of geographic proximity to one of the base areas, average wind speed, peak CO concentrations, observed climate, and general character of the area.

TABLE 4.—CUMULATIVE PERCENT OF ADULT POPULATION IN URBAN AREAS WHOSE COHb Levels Would Exceed Specified COHb Values Upon Attainment of Alternative 8-Hour Standards [a,b,c]

COHb level exceeded (percent)	8-Hour standards		
	9 ppm 1 expected exceedance	12 ppm 1 expected exceedance	15 ppm 1 expected exceedance
3.0		<.01	1.1
2.9		.02	2.5
2.7		0.1	5.9
2.5		0.8	9.7
2.3	<0.1	4.1	14
2.1	0.1 [<.01][d]	8.6	20

[a] Projected cardiovascular and peripheral vascular disease population in all urbanized areas in the United States for 1987 is 5,240,000 adults.

[b] These exposure estimates are based on air quality distributions which have been adjusted to just attain the given standards.

[c] These exposure estimates are based on best judgments of microenvironment transformation factors. Projections for one urban area based on lower and upper estimates of the microenvironment transformation factors are provided in the Exposure Analysis report (Johnson and Paul, 1983).

[d] Exposure estimate for current 9 ppm, 8-hour average deterministic standard.

Table 4 provides estimates for 1987 of the percentage of the adult population living in urban areas who would exceed various COHb levels upon attainment of three alternative 8-hour standards. For example, less than 0.01 percent of the adult population in urban areas is estimated to exceed 2.1 percent COHb due to CO exposures associated with attainment of the current (deterministic) 9 ppm standard, and approximately 20 percent of the adult population is estimated to exceed 2.1 percent COHb upon attainment of a 15 ppm standard with 1 expected exceedance allowed per year. It should be noted that the estimates given in Table 4 are based on air quality distributions which have been adjusted to just attain the given standards.

Several factors make the accuracy of the nationwide exposure estimates uncertain. They include: (1) the paucity of information on several of the needed inputs (e.g., some of the microenvironment multiplicative transformation factors) and (2) the fact

that nationwide estimates were extrapolated from only four urbanized areas. In addition, the results of the Coburn Model Sensitivity Analysis, discussed previously, suggest that the use of two representative sets of physiological parameters (one for men and one for women), rather than the full distributions of the physiological parameters for the population, in applying the Coburn model to derive COHb estimates introduces some further uncertainty, although the uncertainty about such inputs as the microenvironment multiplicative transformation factors is much larger. Exposure Analysis report (Johnson and Paul, 1983) describes some limited sensitivity analysis runs for one urbanized area to give a rough idea of the range of possible COHb levels that would be reached.

Decision on the Primary Standards

The Staff Reassessment and 1984 CASAC findings and recommendations set forth a framework for considering whether revision of the primary CO standards is appropriate at this time. The discussion that follows relies heavily on that framework and on applicable supporting material in the 1979 Criteria Document, 1984 Addendum, 1979 Staff Paper, and earlier CASAC closure letters (Hovey, 1979; Friedlander, 1982).

Based on its assessment of scientific evidence discussed previously in this notice, EPA concludes that adverse health effects clearly occur, even in healthy individuals, at COHb levels in the range of 5 to 20 percent. EPA also remains concerned that adverse health effects may be experienced by large numbers of sensitive individuals with COHb levels in the range 3.0 to 5.0 percent. On this point, CASAC similarly concluded after reviewing the scientific literature (not including the Aronow studies), "that the critical effects level for NAAQS-setting purposes is approximately 3 percent COHb (not including a margin of safety)" (Lippmann, 1984).

In addition to concurring with EPA that cardiovascular effects are likely to occur at approximately 3 percent COHb (Anderson et al., 1973), the CASAC also indicated that several studies (Drinkwater et al., 1974; Raven et al., 1974; and Davies and Smith, 1980) reporting physiological effects in the range 2.3–2.8 percent COHb lend support to concerns about low level CO exposures and should be considered in determining whether a given standard provides an adequate margin of safety. As discussed previously, the Administrator has excluded Dr. Aronow's studies from consideration in his decision on the CO primary standards.

Based on the exposure analysis results summarized previously in Table 4 of this notice, 8-hour single exceedance CO standards in the range 9 to 12 ppm are estimated to keep more than 99 percent of the non-smoking cardiovascular population below 3.0 percent COHb. Different standards within this range would, of course, provide different levels of protection. For example, the current 9 ppm, 8-hour average standard is estimated to keep more than 99.9 percent of the adult cardiovasular population below 2.1 percent COHb. A 12 ppm, 8-hour standard is estimated to keep more than 99 percent of the population below 2.5 percent COHb. The 2.5 percent COHb level is in the range where physiological effects of concern to EPA and CASAC have been reported.

In considering whether revision of the existing primary CO standards is appropriate at this time, the Administrator has considered uncertainties regarding the lowest levels of COHb at which adverse health effects may occur, as well as uncertainties about the levels of COHb likely to result from CO exposure at the levels associated with attainment of alternative standards. More specifically, the Administrator considered the following factors and sources of uncertainty, discussed in the Staff Reassessment (EPA, 1984), in his decision:

1. Human susceptibility to health effects and the levels at which these effects occur vary considerably among individuals, and EPA cannot be certain that experimental evidence has accounted for the full range of susceptibility. In addition, for ethical reasons, clinical investigators have generally excluded from their studies individuals who may be especially sensitive to CO exposure, such as those with a history of myocardial infarction or multiple disease states (e.g., both angina and anemia). Another factor is that, once the Aronow et al. studies are excluded, there are no human exposure studies investigating effects on individuals with angina at COHb levels below the 2.9 percent level reported by Anderson et al. (1973).

2. There is some animal study evidence indicating that there may be detrimental effects on fetal development (e.g., reduced birth weight, increased newborn mortality, and behavioral effects) associated with CO exposure. Similar types of effects have also been found in studies examining effects of maternal smoking on human fetuses. However, it is not possible at this time to sort out the confounding influence of other components of tobacco smoke in causing the effects observed in the human studies. While human exposure-response relationships for fetal effects remain to be determined, these findings denote a need for caution in evaluating the margin of safety provided by alternative CO standards.

3. Other groups that may be affected by ambient CO exposures but for which there is little or no experimental evidence include: anemic individuals (over 3 million individuals), persons with chronic respiratory diseases (about 14 million individuals), elderly individuals (over 24.7 million individuals over 65 years old), visitors to high altitude locations, and individuals on certain medications. The levels of COHb that might produce adverse effects for each of these groups is uncertain. However, elevated COHb levels in even a small percentage of this very large potentially sensitive population would translate to a significant number of individuals. The large size of the potentially sensitive population, then, argues for standards providing a greater margin of safety.

4. There are a number of uncertainties regarding the uptake of CO, including those related to the accuracy of the Coburn equation, in assessing variations in the population due to differing physiological parameters and exposure to varying air quality patterns.

5. Several factors contribute to uncertainties about the exposure estimates of the expected number of individuals achieving various COHb levels upon attainment of alternative standards. These factors include: the paucity of information on several of the needed inputs, the fact that nationwide estimates were extrapolated from only four urbanized areas, and the use of two representative sets (one for men and one for women) of physiological parameters (e.g., blood volume) rather than distributions of physiological parameters in applying the Coburn model to derive COHb estimates in the exposure analysis. As indicated in the Staff Reassessment (pp. 18–21), some individuals with physiological parameters that maximize uptake of COHb, if exposed to certain patterns of air quality attaining a 12 ppm, 8-hour standard, would likely exceed 3.0 percent COHb. Consequently, the Agency is concerned that a 12 ppm, 8-hour standard may not provide an adequate margin of safety. EPA is continuing its CO exposure research efforts, which should lead to future

improvements in its exposure analysis and a better capability to assess the accuracy of the exposure estimates (Johnson, 1984; Hartwell et al., 1984).

6. There is uncertainty regarding adverse health effects that may result from very short duration, high-level CO exposures (the bolus effect). As discussed in the proposal notice (45 FR 55077), existing air quality data indicate that attainment of a 9 ppm, 8-hour averaging time standard should limit the magnitude of short-term peak concentrations.

7. There is some concern about possible interactions between CO and other pollutants, although there is little experimental evidence to document such interactions at this time.

8. Given the unsettled nature of the scientific information bearing on the level of the standard, EPA believes that there is much to be said for a policy that would maintain the status quo until the data become more adequate. That is particularly so given the absence of the information indicating with some assurance that the present standard is set at an incorrect level. For the reasons stated elsewhere in this preamble, the available information falls short of supporting such finding.

The CASAC concurred with the ranges of 9 to 12 ppm for the 8-hour and 25 to 35 ppm for the 1-hour primary standards recommended in the Staff Reassessment and characterized them as scientifically defensible standard ranges. They recommended that the Administrator consider choosing standards that maintain approximately the same level of protection as that afforded by the current standards (Lippman, 1984). In making its recommendation the CASAC cited the uncertainties associated with the scientific data base and margin of safety concerns and its belief" . . . that where the scientific data, as in this case, are subject to large uncertainties, it is desirable for the Administrator to consider a greater margin of safety than the numerical values of COHb generated by the Coburn equation might otherwise suggest" (Lippmann 1984).

Several ongoing human health effect studies are being conducted by EPA and other groups to investigate the effect of CO on aggravation of angina. Subjects in these studies are being exposed to CO levels that result in blood COHb levels in the range 2.0 to 4.0 percent. One study is being conducted by EPA, several are being conducted at the request of EPA by the Health Effects Institute (HEI), and another study is being sponsored by the California Air Resources Board (CARB). The Health Effects Institute is an independent organization which sponsors research on automotive pollutants and is jointly funded by EPA and automobile manufacturers. The peer-reviewed results of these studies are expected by December 1986. EPA will be initiating development of a new criteria document for CO in Fiscal Year 1986. Thus, the Agency should be in a good position to expeditiously assess the results from the above health studies, as well as other scientific evidence published since completion of the Addendum.

Given the uncertainty in the current data base and the fact that new studies are in progress, the Administrator considered deferring a final decision on the CO standards until these new studies have been completed. While this might allow the Administrator to base the decision on better information, the Clean Air Act appears to require periodic decisions on NAAQS notwithstanding any uncertainty in the data base. Deferring this decision would imply that the Agency has inadequate evidence to select an appropriate course of action at this time. However, both EPA and the CASAC have concluded that, even without the Aronow studies, a sufficient scientific data base exists upon which to base a decision. Given these findings, and the concern that a deferral of the decision could be perceived as a signal to relax or delay ongoing control programs, the Administrator has concluded that final action now on the CO standards is warranted and justified.

In reaching a final decision, the Administrator has focused primarily on the level of protection the CO standards should provide. As previously noted, after reassessing the available scientific data and EPA staff recommendations, the CASAC has recommended that the CO standards provide protection approximately equal to the current standards. Based on EPA's assessment of the scientific data, the Administrator concurs with this recommendation. Retention of the current standards would, of course, satisfy this objective.

As discussed above, the standards proposed in August 1980 would also provide approximately the same level of protection as that afforded by the current standards. In addition, these standards would provide some technical changes that the Agency believes would be advantageous. However, the proposed changes would require some modification in the way attainment of the standards is determined. Given the uncertainties in the existing data base and the possibility that the results of the new studies in progress might warrant further revisions within a few years, the Administrator has concluded that it would not be prudent to promulgate the proposed revisions at this time, particularly when they would alter the manner in which attainment is determined.

In short, the Administrator has concluded that it would not be prudent to defer a decision on the CO standards pending the results of the new research mentioned above, that the standards should provide approximately the same level of protection as that afforded by the current standards, and that disruption of ongoing control programs should be minimized. Given these considerations, the Administrator has concluded that the best course of action is not to revise the CO primary standards at this time. Together with the Administrator's decision to rescind the secondary standards (discussed below), this decision completes the current review of the NAAQS for CO under section 109(d). The ongoing studies conducted by the Agency, by the HEI, and by the CARB (all discussed above) will, of course, be considered in the next 5-year review cycle of the CO criteria and standards. Upon completion of this series of studies, the Agency plans to review the results with the CASAC and assess the need for any revisions in the primary standards. If revisions in the standards seem appropriate, the Agency will act expeditiously to revise the standards.

Welfare Effects and the Secondary Standards

Carbon monoxide is a normal constituent of the plant environment. Plants can both metabolize and produce CO. This may explain the fact that relatively high levels of CO are necessary before damage occurs to vegetation. The lowest level for which significant effects on vegetation have been reported is 100 ppm for 3 to 35 days. The effect observed in this study was an inhibition of nitrogen fixation in legumes. Since CO concentrations of this magnitude are rarely if ever observed in the ambient air, it is very unlikely that any damage to vegetation will occur from CO air pollution. No other effects on welfare have been associated with CO exposures at or near ambient levels. Because no standards appear to be requisite to protect the public welfare from any known or anticipated adverse effects from ambient CO exposures, EPA is rescinding the existing secondary standards.

Significant Harm Levels

Section 303 of the Clean Air Act authorizes the Administrator to take

certain emergency actions if pollution levels in an area constitute "an imminent and substantial endangerment to the health of persons." EPA's regulations governing adoption and submittal of SIP's contain a provision (40 CFR 51.16) that requires the adoption by States of contingency plans to prevent ambient pollutant concentrations from reaching specified significant harm levels. The existing significant harm levels for CO were established in 1971 (36 FR 24002) at the following levels and averaging times:

50 ppm—8-hour average
75 ppm—4-hour average
125 ppm—1-hour average

Exposure under these conditions could result in a widespread blood COHb concentration of 5 to 10 percent, the range EPA has determined would cause significant harm. On the basis of EPA's reassessment of the earlier data and assessment of more recent medical evidence, no modifications are being made to the existing significant harm designations. EPA's assessment of the medical evidence on exposure to higher CO concentrations that could lead to significant harm is contained in the 1979 Criteria Document (EPA, 1979b) and in the Addendum (EPA), 1984b).

Summary of Public Comments and Agency Responses

Overview of Comments

The following discussion summarizes in general terms the comments received, at various times since the 1980 proposal, from the public and from Federal and State agencies on the levels of the primary standards and on the related issue of multiple exceedance standards. Significant comments on all aspects of the CO proposal and Agency responses to these comments are summarized by category later in this section. A more detailed description of individual comments and Agency responses is contained in the public docket (OAQPS 79-7).

Comments on 1980 Proposal. Of the written comments received during the initial comment period (which closed November 24, 1980) that expressed some opinion on the level of the proposed 8-hour standard, 7 out of 11 favored EPA's proposed standard or a more stringent standard. Environmental group comments endorsed the proposed standard or recommended tightening of the standard, industry groups favored relaxation of the standard, and local and State agency comments supported the proposed standard or some relaxation of the standard.

Several comments were received on the Agency's proposal to lower the 1-hour standard to 25 ppm. Of the 18 written comments which expressed an opinion on the 1-hour standard, 8 comments favored the proposed standard level, 5 comments urged retention of the existing 35 ppm standard level, and 3 comments recommended revocation of the 1-hour standard. There also was one comment favoring further tightening of the 1-hour standard and one comment favoring a relaxation of the standard. Those favoring revocation of the 1-hour standard argued that the 1-hour standard was redundant since attainment of the 8-hour standard would effectively prevent 1-hour average levels from exceeding either 25 or 35 ppm.

Comments on the proposed revisions were received from five Federal agencies. Four of these agencies neither supported nor opposed the proposed standards. The Department of Commerce urged EPA to maintain the existing 35 ppm, 1-hour standard. The Council on Wage and Price Stability suggested, through the Regulatory Analysis Review Group, that the proposed standards should be based on cost-effectiveness analysis and that if costs were considered, the proposed standards might be excessively stringent.

Comments on Subsequent Notices. As discussed earlier in this notice, EPA announced an additional public comment period on June 18, 1982 to address several key issues, including the Agency's consideration of multiple expected exceedance 8-hour CO standards (47 FR 26407). Of the comments that expressed an opinion on the issue of multiple expected exceedances, 12 out of 23 favored the use of the multiple expected exceedances approach for ambient standards. While State and local governments' comments were almost evenly divided on the question, all industrial groups supported the concept and all environmental groups opposed multiple exceedance standards. Comments from private citizens were evenly divided for and against multiple exceedance standards.

During the period from November 24, 1980 through August 6, 1982 (the close of the second comment period), of those commenting on whether the 8-hour standard should be relaxed, 10 out of 45 favored relaxation. Most of the States (12 of 14) opposed relaxation, while 3 of 5 local governments favored relaxation. As in the earlier comment period, all industry comments favored relaxation while all environmental groups opposed relaxation.

Subsequent to the close of the second public comment period, the State and Territorial Air Pollution Program Administrators (STAPPA) submitted a resolution, endorsed by a majority of State air pollution agencies, which expressed several reservations about a multiple exceedance CO standard. The STAPPA resolution recommended promulgation of single exceedance CO standards.

EPA solicited additional public comment on the draft Staff Reassessment which evaluated the scientific data in view of the diminished value of Dr. Aronow's CO studies on September 16, 1983 (48 FR 41608). Of the 13 comments received in response to this notice that expressed an opinion on the levels of the standards, 7 favored retaining the current primary standards, 2 favored the proposed standards (i.e., 9 ppm for the 8-hour averaging time and 25 ppm for the 1-hour averaging time), and 4 favored relaxation of the 8-hour standard to 12 ppm or higher. Those supporting the proposed or current standards included an environmental group, several State environmental agencies, two health scientists, and one local environmental agency. Those favoring relaxation of the primary 8-hour standard included two from the automotive industry and two local environmental agencies.

On August 9, 1984, EPA summarized the basis for EPA's proposed revisions to the CO standards, announced availability of the final Addendum (EPA, 1984b) and Staff Reassessment (EPA, 1984a), and solicited additional public comment (49 FR 31923). Of the 7 comments received that expressed an opinion on the levels of the standards, 2 favored retaining the current primary standards, 2 favored the proposed primary standards (i.e., 9 ppm, 8-hour and 25 ppm, 1-hour), and 3 favored relaxation of the 8-hour standard to 12 ppm or higher. Two commentors argued that EPA should defer final action on the CO standards until the Health Effects Institute's CO research was completed.

Summary of Significant Comments and Agency Responses

Significant comments are summarized and responded to by category below.

I. Health Effects Criteria and Selection of the Primary Standards

A. Definition of An Adverse Health Effect

Comment: It is questionable whether a reduction in the time to onset of an angina attack following exercise is adverse.

Agency Response: EPA concludes that aggravation of angina represents an

adverse health effect. As explained in the proposal preamble (45 FR 55066), EPA considers such aggravation of angina to be an adverse health effect for several reasons. First, it may result in cardiovascular damage, which is unquantifiable using present technology. Second, aggravation of angina may be the first in a series of progressively more serious symptoms that accompany cardiovascular disease. At low levels of oxygen deprivation, angina patients experience symptoms of chest pain described above. Coronary insufficiency is a more serious symptom that occurs at greater levels of oxygen deprivation. This symptom is sometimes accompanied by changes in enzyme levels and electrocardiographic irregularities. The most serious effect in this continuum of effects is myocardial infarction. In addition to longer and more intense pain, myocardial infarction is accompanied by irreversible heart damage (death of myocardial cells) as indicated by enzyme level changes and electrocardiographic alterations. Finally, because aggravation of angina may be the first in a series of symptoms that may lead to permanent heart damage, EPA considers aggravation of angina an adverse effect and an indicator that more serious effects may occur in some individuals at the same COHb levels. EPA's judgment has been supported by the CASAC and CASAC CO Subcommittee (Hovey, 1979; Lippmann, 1984).

Comment: Scientific research on CO suggests that there is no clear threshold level at which adverse health effects begin. Rather, there appears to be an increase in severity of potential health effects with increasing levels of CO. The fact that a no-effects level cannot be identified may lead to a standard near zero. The current evidence can support standards other than those proposed by EPA.

Agency Response: EPA agrees that there is a continuum of effects consisting of COHb levels at which health effects are certain, through levels at which scientists can generally agree that medically significant effects have been convincingly shown, and down to levels at which health effects are less certain, are harder to identify, and the medical significance of which are typically disputed. In short, the present scientific evidence does not permit selection of an undisputed value for a primary standard. Rather, the Administrator in selecting a standard must make a judgment as to the level of physiological response that should be considered adverse and the relative acceptability of various degrees of uncertainty that any given level is low enough to prevent known and possible adverse health effects.

B. Scientific Validity of the Human Experimental Studies

Comment: Work of Dr. Wilbert Aronow is suspect because results are too consistent, data are not available for evaluation, the study was not double blind, and the subjects tested were not a representative set of angina patients. The Horvath Committee (Horvath et al., 1983) recommended that EPA not rely on Dr. Aronow's studies in setting the CO standards.

Agency Response: The Administrator agrees with the Horvath Committee that there are very serious technical questions about the validity of Dr. Aronow's CO studies and, therefore, is not considering the results of these studies in his decision.

Comment: The Anderson et al. (1973) study should be eliminated from consideration because Anderson et al. reported a COHb level of only 4.5 percent after a four hour, 100 ppm CO exposure, whereas other investigators have generally reported 8–10 percent COHb for similar exposures.

Agency Response: During the Anderson et al. (1973) study, subjects were allowed breaks and, thus, were exposed to CO intermittently, not continuously, for 4 hours. This would cause COHb levels to be substantially lower than for the continuous exposure periods used in other studies.

Comment: The Anderson et al. (1973) study should not be considered for drawing conclusions about lowest observed effect levels because of the (1) small number of subjects, (2) questionable double-blind conditions, (3) missing data for some subjects, (4) lack of dose-response relationships for onset and duration of angina in some subjects, (5) reliance on subjective responses, and (6) inadequate presentation of statistical procedures.

Agency Response: EPA has carefully reviewed the Anderson et al. (1973) study and the above criticisms of the study. A detailed response is contained in a February 20, 1985 memorandum prepared by EPA's scientists in the Office of Research and Development which has been placed in the public docket (OAQPS 79–7, IV–B–2). EPA does not challenge the proposition that the Anderson study has limitations that must be weighed in assessing the study's value for standard setting. Very few, if any, studies are perfect and thus conclusively demonstrate precise pollutant thresholds for the entire range of sensitive persons under various environmental conditions. However, the Agency does not agree with the commenters' characterization of the Anderson study limitations nor with the commenters' conclusion that those limitations are grounds for totally excluding the study from an assessment of the health risks of CO. After carefully evaluating the scientific merit of the study and considering the advice provided by the CASAC, EPA has concluded that the Anderson study should be considered in selecting a CO standard with an adequate margin of safety.

EPA's responses to the major points of concern about the Anderson et al. (1973) study are briefly summarized below:

1. EPA readily acknowledges that the subject sample size is small and that the study would be strengthened if the number of subjects had been greater. However, the sample size is adequate to treat the data statistically and large enough to use in making statistical inferences regarding effects and causal agents. These inferences are routinely made by clinical investigators conducting studies with relatively few subjects and treatment replications. In addition, even though only a small number of subjects were tested, they do represent some portion of the national population suffering from angina.

2. Because of the explicit precautions taken by the author to ensure the integrity of such a protocol, EPA rejects the speculative assertion that the study was not double blind. Specifically, a "double blind" study is one where both the administering investigator and patient are unaware of the nature of any treatment. EPA has contacted the author (Docket ECAO CD 78–3, IIA–J–3) who reaffirmed the study protocol which is consistent with the definition of double blind. The author cited the published study which states:

> A 5-day, double-blind exposure protocol was followed—Only the investigator administering the gas knew which concentration of CO was being used. The patient, technician, and the investigator conducting the exercise test were all unaware of the exposure condition. A curtain separated the gas tanks from the patient—On completion of the five exercise tests for each subject, the ECG records were assigned a random code number and interpreted by an investigator who had not been present and had no knowledge of the exposure sequence.

3. Because of the explicit double blind protocol practiced in the study, there is no basis for concluding that the two subjects who missed one day of exposure had in some way gained knowledge of the exposure conditions due to their missing one of the exposure

sessions. EPA rejects this assertion as illogical and unfounded.

4. The fact that the effects reported were not dose-related in the Anderson et al. study is not surprising given the small range of exposure concentrations, the fact that the exposures were close to the lower limits for CO-related effects, and the small number of subjects. However, EPA has not used this or any other study to develop a dose-response relationship which would show different levels of subject response over a specific range of administered CO doses. EPA has argued that the Anderson study does suggest an increased risk of aggravation of angina for sensitive individuals who have elevated COHb levels.

5. The fact that the endpoint measured by Anderson et al., namely time to onset of angina pian, is subjective in nature is no basis for ignoring this serious and important effect as carefully articulated in the proposal preamble (45 FR 55069):

> EPA considers such aggravation of angina to be an adverse health effect for several reasons. First, it may result in cardiovascular damage, which is unquantifiable using present technology. Second, aggravation of angina may be the first in a series of progressively more serious symptoms that accompany cardiovascular disease. At low levels of oxygen deprivation, angina patients experience symptoms of chest pain described above. Coronary insufficiency is a more serious symptom that occurs at greater levels of oxygen deprivation. This symptom is sometimes accompanied by changes in enzyme levels and electrocardiographic irregularities. The most serious symptom in this continuum of effects is myocardial infarction. In addition to longer and more intense pain, myocardial infarction is accompanied by irreversible heart damage (death of myocardial cells) as indicated by enzyme level changes and electrocardiographic alterations. Finally, because aggravation of angina may be the first in a series of symptoms that may lead to permanent heart damage, EPA considers aggravation of angina an adverse effect and an indicator that more serious effects may occur in some individuals at the same COHb levels.

6. EPA has reanalyzed the data from the Anderson et al. study using a more conservative multivariate analysis which tests each health endpoint separately for purposes of inference (see Appendix A in the Addendum; EPA 1984b). EPA believes that, had Anderson et al. originally used this technique, the effect of time to onset of angina would have been statistically significant ($p=0.014$ at the 97.5 percent confidence level) but that duration of angina experience would not have been statistically significant ($p=0.11$ at the 97.5 percent confidence level).

In conclusion, EPA agrees with the CASAC statement,

> . . . that it is important to replicate such a study, but the notion that a study has no validity until it's been replicated is flawed. Based upon its current knowledge of how the study was conducted, CASAC presumes that double blind protocols were, in fact, observed and that discrepancies between observed and predicted COHb levels are not as great or as serious as originally suggested. In summary, while CASAC treats the Anderson et al. study with caution, it can find no substantive reason at this time to dispute the reported values, and it recommends that the Agency not disregard its findings (Lippmann, 1984).

The Agency continues to believe that the Anderson et al. findings can be appropriately interpreted as providing reasonably good evidence of exacerbation of angina symptoms occurring in some segments of the population at approximately 2.9 to 4.5 percent COHb.

Comment: Psychological factors contribute to angina attacks, making it difficult to reproduce experiments linking CO and angina.

Agency Response: Although psychological factors may contribute to angina attacks, it has been reasonably shown in the study by Anderson et al. that exposure to CO does contribute independently to the aggravation of angina. Given the double-blind design of this study, there is no reason to suppose that the subjects were exposed to different psychological factors on experimental CO exposure days than they were on clean air control days.

C. Margin of Safety

Comment: EPA has proposed CO standards with an inappropriate margin of safety. The margin of safety was criticized as being either inadequate or excessive.

Agency Response: The decision regarding an adequate margin of safety is a judgment which must be made by the Administrator after weighing all the medical evidence bearing on the effects of CO. The factors to be taken into account include inconclusive evidence as well as findings from studies that are considered definitive and not subject to challenge. The Administrator has considered uncertainties regarding the lowest levels of COHb at which adverse health effects may occur, as well as uncertainties about the levels of COHb likely to result from CO exposure at the levels associated with attainment of alternative standards. More specifically, the Administrator considered the factors and sources of uncertainty, discussed earlier in the Decision on the Primary Standards section of this notice and in the Staff Reassessment (EPA, 1984).

EPA has examined the health protection afforded by alternatives to the current CO primary standards. For example, attainment of a 12 ppm, 8-hour CO standard is estimated to keep more than 99 percent of the population below 2.5 percent COHb. The 2.5 percent COHb level, however, is in the range where physiological effects of concern to EPA and CASAC have been reported. In addition, as indicated in the Staff Reassessment (pp. 18–21), some individuals with physiological parameters that maximize uptake of COHb if exposed to certain patterns of air quality attaining a 12 ppm, 8-hour standard would exceed 3.0 percent COHb. Consequently, the Administrator is concerned that a 12 ppm, 8-hour standard may not provide an adequate margin of safety. There is no credible scientific evidence that suggests more stringent CO primary standards than the current standards are required to protect public health with an adequate margin of safety.

D. Coburn Model Sensitivity Analysis of COHb Levels

Comment: The term used in the Coburn model analysis for inspired CO pressure was mistakenly interpreted as a pressure in dry ambient air. The term was intended to refer to CO pressure in air saturated with water vapor at body temperature.

Agency Response: EPA agrees with the comment and has revised all of the COHb estimates used in this notice and in the final COHb Sensitivity Analysis (Biller and Richmond, 1982) to reflect this change.

Comment: The parameters utilized in the EPA COHb Sensitivity Analysis were not representative of the medical literature. Modeling efforts of this kind should choose conservative values for physiological parameters in order to err on the side of protecting public health.

Agency Response: The values selected for the physiological parameters used in the Sensitivity Analysis were carefully reviewed with members of the scientific community and with consultants to the CASAC and were judged to be reasonable estimates. EPA does not agree that the most conservative values should be selected for the physiological parameters because this would introduce an additional margin of safety into an analysis attempting to estimate the effects of alternative standards. The Sensitivity Analysis does use a range of values for the various physiological parameters.

Comment: The draft Sensitivity Analysis does not adequately treat

differences in physiological parameters between men and women.

Agency Response: In an Appendix to the revised Sensitivity Analysis (Biller and Richmond, 1982), men and women are modelled separately and appropriate physiological parameters are selected for each sex based on a review of the scientific literature.

E. Exposure Estimates for Sensitive Population Groups

Comment: Various technical factors in the exposure analysis either systematically underestimate or overestimate exposures that would occur upon attainment of alternative standards. The exposure analysis should not be used in selecting the primary standards until all the recommended changes are incorporated into the analysis.

Agency Response: EPA has carefully reviewed these comments and separated them into three categories. The first category includes comments with which EPA agrees and for which changes have been made in the exposure analysis. The revised exposure analysis estimates are similar in magnitude, after taking these comments into account, to the original exposure estimates.

A second category of comments suggested changes that EPA agrees would refine the exposure assessment methodology, but which are not feasible at this time because of limitations on the resources and time available for this standard review. EPA will incorporate these comments into its plan for improving its exposure assessment capability. While the exact impact of these refinements cannot be clearly predicted at this time, EPA agrees with CASAC's conclusion that the exposure analysis is "acceptable given the current state-of-the-art of the scientific community's ability to model physiological and other parameters related to this pollutant" (Friedlander, 1982).

A third category consists of comments where EPA disagrees with the suggested changes. Detailed responses to these comments are provided in the docket (Docket OAQPS 79–7, V–C–1). EPA recognizes that there is uncertainty about the accuracy to the exposure estimates, but it believes that the revised estimates are reasonable given the state-of-the-art of exposure assessment.

While future refinements in the methodology and availability of additional data will undoubtedly reduce the degree of uncertainty in the exposure estimates, EPA believes that the current Exposure Analysis provides a useful tool to estimate the number of sensitive individuals who would be exposed to various COHb levels upon attainment of alternative standards.

II. Form of the Primary Standards

Comment: Some commenters favored retaining the current deterministic form; others supported either EPA's 1980 proposal to adopt single-expected-exceedance (statistical form) or the concept of multiple-expected-exceedances (statistical form) primary CO standards. Those in favor of adopting a statistical form argued that it would minimize the impact of unusual meteorological events on control strategies with minimal reductions in health protection offered by the standard. Those opposed to a multiple-expected-exceedances standard expressed concerns about the increased health risks to the sensitive population and the ability of the public to understand the basis for allowing multiple excursions of the standard levels.

Agency Response: Given the concerns expressed by the vast majority of State air pollution control agencies and others that a single-exceedance standard, either deterministic or statistical, more closely reflects the health basis for the standard and is more readily implemented and understood by the general public, EPA has decided to retain the single exceedance format for the primary standards. While EPA believes that adopting a statistical, single-exceedance standard would be a technical improvement, EPA is deferring any such change in the primary CO standards until the uncertainties regarding the health effects basis for the standards are better resolved.

III. Miscellaneous

A. Natural Background

Comment: It has been reported that 93% of the CO in the atmosphere is produced by vegetation and the oceans and, therefore, anthropogenic sources of CO should be of little concern.

Agency Response: Although much of the CO produced globally may be of natural origin, the elevated CO levels found in urban areas and in rural areas near roadways are principally a result of human activities involving the combustion of fossil fuels.

B. Stating Standards in ppm and Not mg/m^3

Comment: EPA should state the revised CO standards solely in parts per million (ppm) rather than mg/m^3. Changing to ppm would (1) avoid confusion as to the level of the standards at different altitudes, (2) provide additional protection for high altitude areas, and (3) be consistent with health and monitoring data using the Federal Reference Methods which are reported in ppm.

Agency Response: EPA is retaining both systems of units but is indicating that ppm is the preferred system of units. Section 50.3 specifies that measurements of air quality are to be corrected to standard conditions (i.e., 25 degrees centigrade and sea level pressure), the only difference between ppm and mg/m^3 (at standard conditions) is a scale factor that does not vary with altitude. That is, if a measurement is expressed in ppm units or mg/m^3 units (at standard conditions) the values will differ by a factor of 0.875 regardless of altitude. This conversion factor is specified in Appendix D of 40 CFR Part 50.

Revisions to Part 50 Regulations

Because EPA has decided not to revise the CO primary standards, there are no substantive changes to the Part 50 regulations concerning these standards. EPA is revising the text of the standards slightly, however, to make them clearer and more understandable to the public. EPA is also explicitly stating several data handling conventions that have traditionally been used in EPA's data systems and guidance. These changes are not intended to redefine the standard but simply to reduce potential ambiguity and to formalize existing data handling conventions. The specific points are the 75 percent data completeness rule that EPA has used when computing 8-hour averages and the number of significant figures retained when making comparisons with the levels of the standard. These changes were discussed in the proposal notice. EPA is also changing to ppm units as the preferred units as discussed in the proposal notice. Finally, EPA is also rescinding the secondary standards for CO, as proposed, because there is no evidence of welfare related effects at or near ambient levels.

Part 51 Regulations and SIP Development

This action does not modify the existing Part 51 regulations. Current guidance to State and local air pollution control agencies on how to interpret air quality data for purposes of attainment decisions and SIP development is contained in "Guidelines for the Interpretation of Air Quality Standards" (EPA, 1977).

Regulatory and Environmental Impacts

Regulatory Impact Analysis

As has been noted, the Clean Air Act specifically requires that NAAQS be based on scientific criteria relating to the level that should be attained to protect public health and welfare adequately. The courts have endorsed a reading of the Act that excludes reliance on the cost or feasibility of achieving such a standard in determining the level of the primary standards. In response to Executive Order 12291, EPA has prepared a regulatory impact analysis (RIA). However, EPA's analysis, "Regulatory Impact Analysis for Carbon Monoxide," has not been considered in determining the standard levels in this final notice. The document is available from the address given earlier in the For Further Information Contact section of this notice until supplies are exhausted and from the NTIS whose address is given in the Addressees section of this notice.

Both the RIA and this final notice were submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Any written comments from OMB and any written EPA responses to those comments are available for public inspection at EPA's Central Docket Section, Docket No. OAQPS 79–7, West Tower Lobby, Gallery I, Waterside Mall, 401 M Street SW., Washington, D.C.

Environmental Impacts

Environmental impacts associated with control of CO emission have been examined in the Environmental Impact Statement, which is available in the docket (OAQPS 79–7, IV–A–13) or from EPA at the address given earlier in the For Further Information Contact Section of this notice. This analysis indicates that control strategies required to attain the standards will have minimal adverse impacts on other environmental media.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions. EPA's analysis pursuant to this Act is summarized in a section of the final report, "Cost and Economic Assessment of Alternative National Ambient Air Quality Standards for Carbon Monoxide" (EPA, 1985). A NAAQS for CO by itself has no direct impact on small entities. However, it requires each State to design and implement control strategies for those areas not in attainment. Three possible sources of impacts on small entities include (1) the FMVCP for cars and trucks, (2) I&M programs, and (3) stationary source control programs. FMVCP requirements are largely established by statute or by regulatory provisions not directly related to the levels of these standards. In addition, they fall primarily on automobile manufacturers, none of which are classified as small businesses. Additionally, the incremental cost of CO control, which is passed on to purchasers of motor vehicles—including small entities—is a small fraction of the purchase price and, thus, the impact to these purchasers should be negligible.

I&M programs for CO control may have a slight negative economic impact on small entities, but may also have a positive economic impact on some small entities. The estimated per vehicle average annual cost for the CO portion of an I&M program is estimated to be $3.50 for the inspection fee and $19 for repairs to failed vehicles. (In those few areas needing an I&M program for CO only, these estimates would be doubled.) These costs should not impose a significant negative economic impact on small entities. On the other hand, some small entities such as gas stations and garages will be repairing failed vehicles resulting in a net increase in receipts due to a CO I&M program. In addition, if a decentralized I&M program is implemented using small businesses to inspect motor vehicles, then their net receipts will also increase due to receipt of the inspection fee, most of which they retain. (The remainder goes to the governmental unit sponsoring the area-wide I&M program.)

Finally, only the largest stationary sources of CO appear to need to implement controls to attain the CO standards that were analyzed. These sources are among the largest facilities within their standard industrial class, and therefore are not likely to be small entities.

Based on the analysis summarized above, EPA concludes that no small entity group will be significantly negatively affected due to retention of the primary CO NAAQS. Therefore, pursuant to 5 U.S.C. 605(b) the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Impact on Reporting Requirements

There are no reporting requirements directly associated with this action. There are reporting requirements associated with related sections of the Act, particularly sections 107, 110, 160, and 317 (42 U.S.C. 7407, 7410, 7460, and 7617), however, there are no changes in reporting requirements associated with this final action since the current primary standards are being retained.

Federal Reference Method

The measurement principle and calibration procedure applicable to reference methods for measuring ambient CO concentrations to determine compliance with applicable CO standards are not affected by this action. The measurement principle and the calibration procedure for CO are set forth in Appendix C of 40 CFR Part 50. Reference methods, as well as equivalent methods, for monitoring CO are designated in accordance with 40 CFR Part 53. A list of all methods designated by EPA as reference or equivalent methods for measuring CO is available from any EPA Regional Office, or from EPA, Department E (MD–76), Research Triangle Park, N.C. 27711.

References

Anderson, E.W., R.J. Andelman, J.M. Strauch, N.J. Fortuin, and J.H. Knelson (1973). Effect of low-level carbon monoxide exposure on onset and duration of angina pectoris: A study on 10 patients with ischemic heart disease. *Ann. Intern. Med. 79*:46–50.

Aronow, W.S., and M.W. Isbell (1973). Carbon monoxide effect on exercise-induced angina pectoris. *Ann. Intern. Med. 79*:392–395.

Aronow, W.S., E.A. Stemmer, and M.W. Isbell (1974). Effect of carbon monoxide exposure of intermittent claudication. *Circulation 49*:415–417.

Aronow, W.S. (1981). Aggravation of angina pectoris by 2% carboxyhemoglobin. *American Heart Journal 101*:154–157.

Aronow, W.S. (1983). [Letter to Dr. Lester D. Grant, including Dr. Aronow's reply to Horvath Committee report.] June 4, 1983. Available from: U.S. Environmental Protection Agency, Central Docket Section, Washington, D.C.; Docket No. OAQPS 79–7, IV–H–59.

Ayres, S.M., H.S. Mueller, J.J. Gregory, S. Giannelli, Jr., and J.L. Penny (1969). Systemic and myocardial hemodynamic responses to relatively small concentrations of carboxyhemoglobin (COHb). *Arch. Environ. Health 18*:699–709.

Ayres, S.M., S. Giannelli, Jr., and H. Mueller (1970). Myocardial and systemic responses to carboxyhemoglobin. *In:* Biological Effects of Carbon Monoxide. Proceedings of a Conference, New York, Academy of Sciences, New York, January 12–14.

Ayres, S.M., R.G. Evans, and M.E. Buehler (1979). The prevalence of carboxyhemoglobinemia in New Yorkers and its effect on the coronary and systemic circulation. *Prev. Med. 8*:323–332.

Beard, R.R., and G.A. Wertheim (1967). Behavioral impairment associated with small doses of carbon monoxide. *Am. J. Pub. Health 57*:2012–2022.

Beard, R.R., and N.W. Grandstaff (1975). Carbon monoxide and human functions *In:*

Behavioral Toxicology. B. Weiss and V.G. Laties, eds., Plenum Press, New York. pp. 1–26.

Bender, W.W. Cothert, G. Malorny, and P. Sebbesse (1971). Effects of low carbon monoxide concentrations in man. *Arch. Toxicol. 27*:142–158.

Benignus, V.A., D.A. Otto, J.D. Prah, and G. Benignus (1977). Lack of effects of carbon monoxide on human vigilance. *Percept. Mot. Skills 45*:1007–1014.

Biller, W.F. and H.M. Richmond (1982). Sensitivity Analysis on Coburn Model Predictions of COHb Levels Associated with Alternative CO Standards. Prepared for Office of Air Quality Planning and Standards, U.S. EPA. Research Triangle Park, N.C.

Christensen, C.L., J.A. Gliner, S.M. Horvath, and J.A. Wagner (1977). Effects of three kinds of hypoxias on vigilance performance. *Av. Sp. Env. Med. 48*:491–496.

Coburn, R.F., W.S. Blakemore, and R.E. Forster (1963). Endogenous carbon monoxide production in man. *J. Clin. Invest. 42*:1172–1178.

Coburn, R.F., R.E. Foster, and P.B. Kane (1965). Considerations of the physiology and variables that determine the blood carboxyhemoglobin concentration in man. *J. Clin. Invest. 44*:1899–1910.

Coburn, R.F. (1979). Mechanisms of carbon monoxide toxicity. *Prev. Med. 8*:310–322.

Davies, D.M. and D.J. Smith (1980). Electrocardiographic changes in healthy men during continuous low-level carbon monoxide exposure. *Environ. Res. 21*:9–15.

DHEW [U.S. Department of Health, Education, and Welfare] (1970). Air Quality Criteria for Carbon Monoxide. Washington, D.C. AP–62.

DHEW (1975). Public Health Service (PHS). Coronary Heart Disease in Adults, United States: 1960–1962. Hyattsville, Maryland. DHEW Publication No. (PHS) 79–1019.

DOC [U.S. Department of Commerce] (1980). Statistical Abstract of the United States, 1980 (101st edition). Bureau of Census.

Drinkwater, B.L., P.B. Raven, S.M. Horvath, J.A. Gliner, R.O. Ruhling, N.W. Bolduan, and S. Taguchi (1974). Air pollution, exercise, and heat stress. *Arch. Environ. Health 28*:177–181.

EPA [U.S. Environmental Protection Agency] (1977). Guideline for the Interpretation of Air Quality Standards. Office of Air Quality Planning and Standards, Research Triangle Park, N.C. Publication No. 1–2–008.

EPA (1979a). Preliminary Assessment of Adverse Health Effects from Carbon Monoxide and Implications for Possible Modifications of the Standard. (Draft staff paper presented at the meeting of the Clean Air Scientific Advisory Committee, June 14–16, 1979.)

EPA (1979b). Air Quality Criteria for Carbon Monoxide. Environmental Criteria and Assessment Office, Research Triangle Park, N.C. EPA–600/8–79–022.

EPA (1980). Sensitivity Analysis on Coburn Model Predictions of COHb Levels Associated with Alternative CO Standards (Draft). Office of Air Quality Planning and Standards, Research Triangle Park, N.C.

EPA (1984a). Review of the NAAQS for Carbon Monoxide: Reassessment of Scientific and Technical Information. Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA–450/5–84–004.

EPA (1984b). Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure: An Addendum to the 1979 Air Quality Criteria Document for Carbon Monoxide. Environmental Criteria and Assessment Office, Research Triangle Park, N.C. EPA–600/8–83–033f.

Ekblom, B., and R. Huot (1972). Response to submaximal and maximal exercise at different levels of carboxyhemoglobin. *Acta Physiol. Scand. 86*:474–482.

Fodor, G.G., and G. Winneke (1972). Effect of low CO concentrations on resistance to monotony and on psychomotor capacity. *Staub Reinhalt. Luft 32*:45–54.

Friedlander, S.K. (1982). Letter to Ann M. Gorsuch, EPA Administrator. August 31.

Goldsmith, J.R., and S.A. Landau (1968). Carbon monoxide and human health. *Science 162*:1352–1359.

Goldstein, I. (1982). Letter to the editor: Seasonal relationship of sudden infant death syndrome and environmental pollutants *Am. J. Epid. 116*:189–191.

Groll-Knapp, E., H. Wagner, H. Hauck, and M. Haider (1972). Effects of low carbon monoxide concentrations on vigilance and computer-analyzed brain potentials *Staub Reinhalt. Luft 32*:64–68.

Haider M., E. Groll-Knapp, H. Hoeller, M. Neuberger, and H. Stidl (1976). Effects of moderate CO dose on the central nervous system—electrophysiological and behaviour data and clinical relevance. *In*: Research Conference, American Medical Association, San Francisco, California, December 5–6, 1974. A.J. Finkel and W.C. Duel, eds., Publishing Sciences Group, Inc., Acton, MA. pp. 217–232.

Hartwell, T. et al. (1984). Study of Carbon Monoxide Exposure of Residents of Washington, D.C., and Denver, Colorado. Prepared by Research Triangle Institute for U.S. EPA, Environmental Monitoring Systems Laboratory, Research Triangle Park, N.C.

Hoppenbrouwers, T., M. Calub, K. Arakawa, and J.E. Hodgman (1981). Seasonal relationship of sudden infant death syndrome and environmental pollutants. *Am. J. Epid. 113*:623–625.

Horvath, S.M., T.E. Dahms, and J.F. O'Hanlon (1971). Carbon monoxide and human vigilance: A deleterious effect of present urban concentrations. *Arch. Environ. Health 23*:343–347.

Horvath, S.M., P.B. Raven, T.E. Dahms, and D.J. Gray (1975). Maximal aerobic capacity at different levels of carboxyhemoglobin. *J. Appl. Physiol. 38*:300–303.

Horvath, S.M., S.M. Ayres, D.S. Sheps, and J. Ware (1983). [Letter to Dr. Lester D. Grant, including the Horvath Committee report on Dr. Aronow's sutdies.] May 25. Available from: U.S. Environmental Protection Agency, Central Docket Section, Washington, D.C.; docket no. OAQPS 79–7, IV–H–58.

Hovey, H.H., Jr. (1979). Memorandum to EPA Administrator from CASAC CO Subcommittee. October 9.

Johnson, T. and R.A. Paul (1983). The NAAQS Exposure Model (NEM) Applied to Carbon Monoxide. Prepared by PEDCo Environmental, Inc. for Office of Air Quality Planning and Standards, U.S. EPA, Durham, N.C. EPA–450/5–83–003.

Johnson, T.A. (1984). Study of Personal Exposure to Carbon Monoxide in Denver, Colorado. Prepared by PEI, Inc., for U.S. EPA, Environmental Monitoring Systems Laboratory, Research Triangle Park, N.C. EPA–600/54–84–014.

Klein, J.P., H.V. Forster, R.D. Stewart, and A. Wu (1980). Hemoglobin affinity for oxygen during short-term exhaustive exercise. *J. Appl. Physiol. 48*:236–242.

Kurt, T.L., R.P., Mogielnicki, and J.E. Chandler (1978). Association of the frequency of acute cardiorespiratory complaints with ambient levels of carbon monoxide. *Chest 74*:10–14.

Kurt, T.L., R.P., Mogielnicki, and J.E. Chandler, and K. Hirst (1979). Ambient carbon monoxide levels and acute cardiorespiratory complaints: an exploratory study. *Am. J. Public Health 69*:360–363.

Lippmann, M. (1984). CASAC Findings and Recommendations on the Scientific Basis for a Revised NAAQS for Carbon Monoxide. [Letter to W.D. Ruckelshaus, EPA Administrator]. May 17. Available from: U.S. EPA, Central Docket Section, Washington, D.C.; docket no. OAQPS 79–7, IV–K–25.

Longo, L.D. (1977). The biological effect of carbon monoxide on the pregnant woman, fetus, and newborn infant. *Am. J. Obstet. Gynecol. 129*:69–103.

O'Donnell, R.D., P. Mikulka, P. Heinig, and J. Theodore (1971). Low level carbon monoxide exposure and human psychomotor performance. *Toxicol. Appl. Pharmacol. 18*:593–602.

McFarland, R.A., F.J.W. Roughton, M.H. Halperin, and J.I. Niven (1944). The effects of carbon monoxide and altitude on visual thresholds. *J. Aviat. Med. 15*:381–394.

McFarland, R.A. (1973). Low level exposure to carbon monoxide and driving performance. *Arch. Environ. Health 27*:355–359.

Paul, R.A. and T. Johnson (1985). The NAAQS Exposure Model (NEM) Applied to Carbon Monoxide: An Addendum. Prepared by PEI, Inc. for U.S. EPA, Office of Air Quality Planning and Standards, Durham, NC. EPA–450/

Peterson, D. (1981). The sudden infant death syndrome—reassessment of growth retardation in relation to maternal smoking and the hypoxia hypothesis. *Am. J. Epid. 113*:583–589.

Pirnay, F., J. Dujardin, R. Deroanne, and J.M. Petit (1971). Muscular exercise during intoxication by carbon monoxide. *J. Appl. Physiol. 31*:573–575.

Putz, V.R., B.L. Johnson, and J.V. Setzer (1976). Effects of CO on Vigilance Performance. Effects of Low Level Carbon Monoxide on Divided Attention, Pitch Discrimination, and the Auditory Evoked Potential. U.S. Department of Health, Education, and Welfare, National Institute of Occupational Safety and Health, Cincinnati, OH. DHEW (NIOSH) Publication No. 77–124.

Putz, V.R., B.L. Johnson, and J.V. Setzer (1979). A comparative study of the effects of carbon monoxide and methylene chloride on human performance. In: *Proc. 1st. Ann. NIOSH Sci. Symp.* Chicago: Pathotox Publishing Co.

Putz, V.R. (1979). The effects of carbon monoxide on dual-task performance. *Human Factors 21*:13–24.

Raven, P.B., B.L. Drinkwater, S.M. Horvath, R.O. Ruhling, J.A. Gliner, J.C. Sutton, and N.W. Bolduan (1974). Age, smoking habits, heat stress, and their interactive effects with carbon monoxide and peroxyacetylnitrate on man's aerobic power. *Int. J. Biometeorol. 18*:222–232.

Rockwell, R.J., and F.W. Weir (1975). The Interactive Effects of Carbon Monoxide and Alcohol on Driving Skills. Ohio State University Research Foundation, Columbus, OH.

Rummo, N., and K. Sarlanis (1974). The effect of carbon monoxide on several measures of vigilance in a simulated driving task. *J. Saf. Res. 6*:126–130.

Salvatore, S. (1974). Performance decrement caused by mild carbon monoxide levels on two visual functions. *J. Saf. Res. 6*:131–134.

Schulte, J.H. (1973). Effects of mild carbon monoxide intoxication. *Arch. Environ. Health 7*:524–530.

Stewart, R.D., P.E. Newton, J. Kaufman, H.V. Forster, and J.P. Klein (1978). Effect of a rapid 4 percent carboxyhemoglobin saturation increase on maximal treadmill exercise. CRC–APRAC–CAPM–22–75.

Vogel, J.A. and M.A. Gleser (1972). Effects of carbon monoxide on oxygen transport during exercise. *J. Appl. Physiol. 32*:234–239.

Weiser, P.C., C.G. Morrill, D.W. Dickey, T.L. Kurt, and G.J.A. Cropp (1978). Effects of low-level carbon monoxide exposure on the adaptation of healthy young men to aerobic work at an altitude of 1,610 meters. *In:* Environmental Stress. Individual Human Adaptations. L.J. Folinsbee, J.A. Wagner, J.F. Borgia, B.L. Drinkwater, J.A. Gliner, and J.F. Bedi, eds., Academic Press, New York, pp. 101–110.

Winneke, G. (1974). Behavioral effects of methylene chloride and carbon monoxide as assessed by sensory and psychomotor performance. *In:* Behavioral Toxicology. Early Detection of Occupational Hazards. Proceedings of a Workshop, National Institute for Occupational Safety and Health and University of Cincinnati, Cincinnati, Ohio, June 24–29, 1973. C. Xintaras, B.L. Johnson, and I. de Groot, eds., U.S. Department of Health, Education and Welfare, DHEW Publication No. (NIOSH) 74–126.

Wright, G., P. Randell, and R.J. Shephard (1973). Carbon monoxide and driving skills. *Arch. Environ. Health 27*:349–354.

Yabroff, L. E. Myers, V. Fend, N. David, M. Robertson, R. Wright, and R. Braun (1974). The Role of Atmospheric Carbon Monoxide in Vehicle Accidents. Stanford Research Institute, Menlo Park, CA.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: September 5, 1985.

Lee M. Thomas,

Administrator.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

For the reasons set forth in the preamble, EPA amends Chapter I, Part 50, of Title 40 of the Code of Federal Regulations as follows:

1. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

2. Section 50.8 is revised to read as follows:

§ 50.8 National primary ambient air quality standards for carbon monoxide.

(a) The national primary ambient air quality standards for carbon monoxide are:

(1) 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year and

(2) 35 parts per million (40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year.

(b) The levels of carbon monoxide in the ambient air shall be measured by:

(1) a reference method based on Appendix C and designated in accordance with Part 53 of this chapter, or

(2) an equivalent method designated in accordance with Part 53 of this chapter.

(c) An 8-hour average shall be considered valid if at least 75 percent of the hourly average for the 8-hour period are available. In the event that only six (or seven) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using six (or seven) as the divisor.

(d) When summarizing data for comparision with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

[FR Doc. 85–22025 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

Reader Aids

Federal Register

Vol 50, No. 178

Friday, September 13, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35533-35766.....3
35767-36030.....4
36031-36404.....5
36405-36562.....6
36563-36860.....9
36861-36982.....10
36983-37162.....11
37163-37342.....12
37343-37502.....13

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....35533

3 CFR

Administrative Orders:
Memorandums:
September 5, 1985.....36563
August 7, 1985.....36565
Executive Orders:
11888 (Amended by Proc. 5365).....36220
12530.....36031
12531.....36033
12532.....36861
Proclamations:
4707 (Amended by Proc. 5365).....36220
4768 (Amended by Proc. 5365).....36220
5133 (Amended by Proc. 5365).....36220
5142 (Amended by Proc. 5365).....36220
5291 (Amended by Proc. 5365).....36220
5305 (Amended by Proc. 5365).....36220
5308 (Amended by Proc. 5365).....36220
5365.....36220

7 CFR

6.....36037, 36040
51.....36041, 37163
250.....37163
252.....37163
319.....35533
736.....35535
908.....35767, 37171
919.....37343
920.....36567
931.....37343
981.....35767, 37343
982.....37343
989.....35769
993.....37343
1036.....36865
1135.....36043
1427.....36568
1435.....37171
1472.....35772
Proposed Rules:
27.....37378
51.....37379
52.....36094
420.....36580
423.....36584
432.....36589
433.....36593
442.....36597
917.....35828
920.....35828
989.....36436
999.....35564
1135.....35829
1806.....37200

9 CFR

Proposed Rules:
51.....37201
71.....37201
77.....35564
78.....37201
80.....37201
92.....37201
309.....36094, 36998

10 CFR

25.....36983
35.....36866
95.....36983

12 CFR

4.....37344
611.....36985
Proposed Rules:
615.....36868
701.....36998
748.....37380

14 CFR

39.....35772, 36044-36046, 36570, 36869, 36987-36990, 37172, 37173
71.....36047, 37344, 37345
108.....35535
Proposed Rules:
Ch. I.....36884
21.....36437
39.....35830-35839, 36095-36102, 36441, 36600
71.....35840, 36884, 37004

15 CFR

376.....37112
379.....37112-37136
399.....37112-37136

16 CFR

4.....36048
455.....37345
Proposed Rules:
13.....35565, 37229

17 CFR

1.....36049
31.....36405
190.....36405
211.....37346
Proposed Rules:
1.....36104
3.....36104

18 CFR

154.....36571
157.....36571
385.....36051

Proposed Rules:

357.....36601

19 CFR

Proposed Rules:

101.....37004
162.....36603

20 CFR

302.....36870
322.....36870
340.....36870
404.....36571

Proposed Rules:

295.....35568
416.....36108

21 CFR

74.....35774
81.....35774-35789
82.....35774
177.....35535
178.....36872
452.....36991
510.....35535, 37347
522.....37347
558.....35535, 35536, 36419, 36874, 37347
1040.....36548

Proposed Rules:

74.....35841
82.....35841
170.....35571
182.....37381
314.....37381
808.....36441-36443

25 CFR

36.....36575

26 CFR

1.....35536, 35540, 36575, 37347
5f.....37347
6a.....35540
145.....37350
602.....35536, 35540, 37347, 37350

Proposed Rules:

1.....35572, 37004, 37381
602.....35572

28 CFR

0.....36054
2.....36419-36423, 37352

Proposed Rules:

16.....37232-37236

29 CFR

1910.....36992, 37352
2619.....37354
2641.....36992

Proposed Rules:

33.....36885
2642.....36603

30 CFR

920.....36970

Proposed Rules:

Ch. I.....36885
817.....35573
870.....36858
913.....37318
917.....37382
925.....37383
944.....36554

31 CFR

51.....36055
103.....36875
206.....35547

Proposed Rules:

223.....36115

32 CFR

155.....35790
706.....36424-36425
865.....36426

Proposed Rules:

230.....36610
231.....36619
231a.....36622

33 CFR

100.....35552-35554, 36576
117.....37174, 37175, 37355
151.....36768
158.....36768
165.....35555

Proposed Rules:

100.....36628-36629
110.....37237
117.....36630, 37384
207.....35573

34 CFR

74.....37356

Proposed Rules:

682.....35964
683.....35964

35 CFR

Proposed Rules:

133.....36444

36 CFR

7.....37361
327.....35555

Proposed Rules:

228.....37005

38 CFR

3.....36577
19.....36992
21.....36578

Proposed Rules:

3.....36631

39 CFR

10.....36431
111.....36875
3001.....37175

Proposed Rules:

111.....35843, 36885, 36886

40 CFR

15.....36188
50.....37484
52.....35796, 36876, 37176, 37178, 37362
60.....36830
65.....37178-37181
66.....36732, 36734
67.....36732
81.....35561, 37362
133.....36879
180.....36579, 36994
261.....37362
271.....35798
466.....36540
799.....37182

Proposed Rules:

52.....36633-36635, 37238
60.....36956
65.....36637
85.....36838
147.....35574
180.....35844
261.....36966, 37338
262.....36886
271.....37338, 37385
430.....36444
439.....36638
600.....36838
721.....37386
799.....36446

41 CFR

201-1.....36995
201-2.....36995
201-8.....36995
201-11.....36995
201-16.....36995
201-20.....36995
201-21.....36995
201-23.....36995
201-24.....36995
201-26.....36995
201-30.....36995
201-31.....36995
201-32.....36995
201-38.....36995
201-39.....36995
201-40.....36995

42 CFR

420.....37370
455.....37370
489.....37370
505.....35646
512.....35646

Proposed Rules:

124.....36454
420.....37386

43 CFR

1820.....36055

Proposed Rules:

17.....37006
2200.....37389

44 CFR

59.....36016
60.....36016
61.....36016
64.....36016
66.....36016
70.....36016
72.....36016
75.....36016

45 CFR

101.....37370

Proposed Rules:

101.....37386

46 CFR

Proposed Rules:

160.....36639

47 CFR

Ch. I.....36056
0.....36061, 37189
1.....37190
2.....36061
18.....36061
25.....36071, 36432
73.....35562, 35799-35800
83.....36880
97.....36080

Proposed Rules:

73.....35574-35581, 35845

48 CFR

15.....35815
52.....35815
501.....36080
502.....36080
504.....36080
505.....36080
506.....36080
507.....36080
509.....36080
510.....36080
514.....36080
515.....36080
525.....36080
536.....36080
549.....36080
914.....35956
915.....35956
952.....35956

Proposed Rules:

227.....36887
252.....36887
549.....35582
552.....35582

49 CFR

Ch. X.....35562
192.....37191
195.....37191
571.....36084, 36995, 36996
1033.....36085
1085.....35563
1152.....36432

Proposed Rules:

Ch. X.....37391
192.....36116
218.....35636
221.....35636
232.....35640, 35643
571.....35583, 37240

50 CFR

17.....36085, 36089, 37192, 37194
20.....35762, 36198, 36432-36433, 36996
32.....35563, 35815, 37198
33.....35563
216.....37377
611.....35825, 36997
621.....36434
630.....35563

658.....37198
661.....35827, 36092
672.....35825
675.....35825, 36997

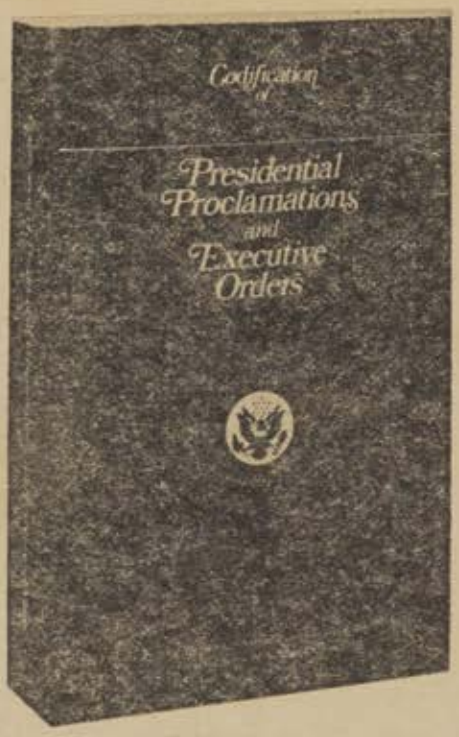
Proposed Rules:
17.....35584, 36118, 37249, 37252, 37391

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1985

UPDATED EDITION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1981, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961-1981 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge

VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $10.00 per copy. Stock No. 022-002-00097-0.*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE